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In re Idaho Dept. of Water Resources Amnded Final Order Creating Water Dist. No. 170 Clerk's Record v. 2 Dckt. 35175

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Vol. 2 of 6

IN THE SUPREME COURT OF THE STATE OF IDAHO

LAW CLERK

IN RE: IDAHO DEPARTMENT OF WATER
RESOURCES AMENDED FINAL ORDER
CREATING WATER DISTRICT NO. 170

SUPREME COURT NO. 35175
Custer County Case No. CV-06-66

THOMPSON CREEK MINING COMPANY,

Petitioner/Appellant,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES

Respondent

FILED - COPY

AUG 20 2008

Supreme Court _____ Court of Appeals _____
Entered on ATS by: _____

Appeal from: District Court of the Seventh Judicial District of the State of Idaho, in and for
the County of Custer;

Before the Honorable Brent J. Moss, District Judge.

ATTORNEY FOR PETITIONER/APPELLANT: Scot L. Campbell, Esq., and Dylan B.
Lawrence, Esq., P.O. Box 829, Boise ID 83701

ATTORNEY FOR DEFENDANTS/RESPONDENTS: Phillip J. Rassier, Esq., P.O.
Box 83720, Boise, Idaho 83720, Reed W. Larsen, Esq., P.O. Box 4229, Pocatello ID 83205-4229

BOOK 2 OF 5

35175

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes of this Partial Decree shall be defined as set forth at I.C. § 42-1401A(12) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus

stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 10 cfs (including not more than 300 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water

right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

3. Quantity of right:

a. When the stream flow at the Selway River quantification site as defined in Section 3.d. below ("Selway gage") is less than 23,700 cfs, the United States is entitled to the following flow:

b. When the stream flow at the Selway gage is greater than or equal to 23,700 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying

the subordination provided in this right), the United States is entitled to all flows, up to 51,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Selway River basin when the stream flow at the Selway gage exceeds the flow amount in Section 3.a. and is less than 23,700 cfs.

d. The quantification site for the flows identified above is the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3".

e. This water right precludes any diversion of water out of the watershed of the Selway River Basin upstream from the ending point of the Selway Wild and Scenic River at its confluence with the Lochsa River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Origin of the Selway River --
SW1/4NE1/4, Sec. 21, T25N, R14E, Boise Meridian;
Latitude N 45° 29' 48.9", Longitude W 114° 44' 33.7".

Ending point: Confluence with the Lochsa River at Lowell
-- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian;
Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Selway Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Selway River Basin upstream from the ending point, as described in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five

hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(12) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre and no storage other than incidental storage). This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use

involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

ATTACHMENT 5

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IN RE SRBA	)	PARTIAL DECREE FOR
)	
CASE NO. 39576	)	Federal Reserved Water Right 81-10513
)	
	)	Lochsa Wild and Scenic River

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724
2. Source of water: Lochsa River
3. Quantity of right: a. When the stream flow at the Lochsa River quantification site as defined in Section 3.d. below ("Lochsa gage") is less than 18,600 cfs, the United States is entitled to the following flow:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	933	July 1-15	3600
January 16-31	933	July 16-31	1400
February 1-15	933	August 1-15	989
February 16-28(29)	933	August 16-31	743
March 1-15	933	September 1-15	646
March 16-31	2750	September 16-30	719
April 1-15	4620	October 1-15	855
April 16-30	8030	October 16-31	933
May 1-15	10300	November 1-15	933
May 16-31	17600	November 16-30	933
June 1-15	13600	December 1-15	933
June 16-30	8030	December 16-31	933

- b. When the stream flow at the Lochsa gage is greater than or equal to 18,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying

the subordination provided in this right), the United States is entitled to all flows, up to 39,300 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Lochsa River basin when the stream flow at the Lochsa gage exceeds the flow amount in Section 3.a. and is less than 18,600 cfs.

d. The quantification site for the flows identified above is the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6".

e. This water right precludes any diversion of water out of the watershed of the Lochsa River Basin, upstream from the ending point of the Lochsa Wild and Scenic River at its confluence with the Selway River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Powell Ranger Station (USDA Forest Service) -- SW1/4NW1/4, Sec. 33, T37N, R14E, Boise Meridian; Latitude N 46° 30' 33.1", Longitude W 114° 42' 43.1".

Ending point: Confluence with the Selway River at Lowell -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

- 8. Place of use:** This instream flow water right is used throughout the designated Lochsa Wild and Scenic River from the beginning point to the ending point as identified above.
- 9. Annual volume of consumptive use:** This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).
- 10. Other provisions necessary for definition or administration of this water right:**
- a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).
 - b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Lochsa River Basin upstream from the ending point, as identified in element 5 above:
 - (1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.
 - (2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.
 - (3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day

or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes of this Partial Decree shall be defined as set forth at I.C. § 42-1401A(12) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified

in this paragraph (5) for future rights.

Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724
2. Source of water: Middle Fork Clearwater River
3. Quantity of right:
 - a. When the stream flow at the Middle Fork Clearwater River quantification site as defined in Section 3.d. below ("Middle Fork Clearwater site") is less than 37,900 cfs, the United States is entitled to the following flows:

b. When the stream flow at the Middle Fork Clearwater site is greater than or equal to 37,900 cfs (as adjusted by upstream junior depletions, including depletions from water

rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 80,700 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Clearwater River basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia when the stream flow at the Middle Fork Clearwater site exceeds the flow amount in Section 3.a. and is less than 37,900 cfs.

d. The quantification site for the flows identified above is at or above the ending point described below, either: based on the sum of the discharges measured at the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6", and at the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3", or the discharge measured at a new stream gage to be established in the vicinity of the ending point described below.

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Clearwater River Basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Confluence of the Lochsa and Selway Rivers at the town of Lowell, Idaho -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

Ending point: Town of Kooskia, Idaho -- NE1/4SW1/4,
Sec. 4, T32N, R4E, Boise Meridian; Latitude N 46° 08'
26.6", Longitude W 115° 57' 54.5".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act,
Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as
amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the
designated Middle Fork Clearwater Wild and Scenic River
from the beginning point to the ending point as identified
above.

**9. Annual volume of
consumptive use:**

This instream flow water right is non-consumptive (other
than evaporation and evapotranspiration which may take
place within the designated segment).

**10. Other provisions necessary
for definition or administration
of this water right:**

a. This is a federal reserved water right based on the
Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906,
Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et
seq.).

b. This Partial Decree is entered pursuant to that
Stipulation among the United States, the State of Idaho and
other objectors with an effective date of September 1, 2003
(the "Stipulation"), and pursuant to that Stipulation this
water right is subordinated to the following water rights
and uses that are junior to this federal reserved water right
and that have points of diversion or impoundment and
places of use within the Middle Fork Clearwater River
Basin upstream from the ending point, as described in
element 5 above:

(1) All water right claims filed in the Snake
River Basin Adjudication (SRBA) as of the
effective date of the Stipulation to the extent
ultimately decreed in the SRBA.

(2) All applications for permit and permits with
proof of beneficial use due after November 19,
1987, on file with IDWR as of the effective date of
the Stipulation, to the extent such applications for
permit or permits are ultimately licensed; and all

water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes of this Partial Decree shall be defined as set forth at I.C. § 42-1401A(12) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a

total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. The 40 cfs of diversion and not more than 500 acres of irrigation are in addition to the 40 cfs of diversion and not more than 500 acres of irrigation from each, the Selway and Lochsa Rivers upstream from their confluence with the Middle Fork Clearwater River. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA)	
)	
	)	Consolidated Subcase No. 75-13316
	)	Wild & Scenic Rivers Act Claims
	)	(Encompassing Subcases 75-13316, 77-11941, 77-13844
	)	78-11961, 81-10472, 81-10513 and 81-10625)
)	
CASE NO. 39576	)	Order Approving Stipulation and Entry of
	)	Partial Decrees
)	
_____)	

The District Court of the Fifth Judicial District in and for the County of Twin Falls, having entered its Commencement Order on November 19, 1987, commencing the Snake River Basin Adjudication ("SRBA"); the United States of America, the State of Idaho and the other objectors to these consolidated subcases, through their respective counsel, having presented a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"); due notice of the requested approval of the Stipulation and the proposed entry of the Partial Decrees having been given pursuant to the Idaho Rules of Civil Procedure and the SRBA Court Administrative Order 1; the Court having reviewed the Stipulation, the proposed Partial Decrees and supporting affidavits and having heard the parties concerning these matters;

THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:

The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1. The Stipulation is a fair and equitable settlement of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers. The Stipulation does not adversely affect the interests of persons not party to the Stipulation and good cause has been shown for granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All terms of the Stipulation and the Partial Decrees for the United States' Wild and Scenic Rivers Act federal reserved water rights claims numbered 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625, as attached to the Stipulation (the "Partial Decrees"), are hereby ratified, confirmed and approved.

2. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, the relationship between these federal water rights and other water rights and administration of the subordination provisions of the Partial Decrees.

3. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in

the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. This Order is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

4. The water rights adjudicated by the Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of _____, 2004, I served a true and correct copy of the foregoing **ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES**, by depositing a copy thereof in the U.S. mail, postage prepaid to the following:

All parties indicated on the attached Certificate of Service for Wild and Scenic Rivers Act Claims, Consolidated Subcase 75-13316

Deputy Clerk

EXHIBIT B

to

Thompson Creek Mining Company's
Memorandum in Support of Motion to Clarify Service List

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)	
CREATION OF A WATER DISTRICT	)	NOTICE OF PUBLIC
IN THE UPPER SALMON RIVER BASIN	)	INFORMATION MEETING
AREA IN ADMINISTRATIVE BASINS 71 & 72	)	AND HEARING
<hr/>		

The Director of the Idaho Department of Water Resources ("Director") is authorized to divide the state into water districts for the purpose of distributing water among appropriators under the laws of the State of Idaho. The authority to create water districts applies to those streams, or other water sources including ground water, for which the priorities of appropriation have been adjudicated by court decree. During a water rights adjudication, Idaho Code § 42-1417 authorizes the district court to approve interim administration of the rights by the Director if reasonably necessary to protect senior rights. The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with a Director's Report as may be modified by the court's order.

On September 29, 2005 the Snake River Basin Adjudication ("SRBA") District Court issued an order authorizing the Director to distribute water pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director's Reports and partial decrees that have superseded the Director's Reports within Administrative Basins 71 and 72 (a copy of the order is posted on the following SRBA Court website link: <http://www.idwr.idaho.gov/water/districts/>). The Director proposes to create a permanent water district for all of Administrative Basins 71 and 72 as shown on the attached map.

NOTICE IS HEREBY GIVEN, pursuant to Idaho Code § 42-604, that the Director of the Department of Water Resources will conduct a public hearing regarding the proposed creation of the water district as follows:

PUBLIC HEARING FOR PROPOSED WATER DISTRICT:

7:00 PM, November 9, 2005 at the Challis High School Cafeteria,
100 High St., Challis, Idaho.

NOTICE IS FURTHER GIVEN that the Department of Water Resources will also hold a public information meeting as follows:

PUBLIC INFORMATION MEETING FOR PROPOSED WATER DISTRICT:

7:00 PM, October 24, 2005 at the Challis High School Cafeteria,
100 High St., Challis, Idaho.

Information and testimony presented at the hearing on November 9, 2005, will create a record upon which the Director will rely to determine whether formation of a water district is appropriate, and if so, how the district should be formed. It is important that holders of water rights understand and participate in the hearing process. The Director will serve as the hearing officer. Persons attending the hearing will be provided an opportunity to provide oral testimony regarding the

creation of the proposed district. Written comments may also be submitted to the Director at the hearing or at any time prior to the close of the written comment period on November 21, 2005. Written comments not presented at the hearing can be sent to the Director to be received at the Department of Water Resources, P. O. Box 83720, Boise, Idaho, 83720-0098, no later than November 21, 2005.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. Should you require special accommodations in order to attend, participate in, or understand the hearing, please contact the Department of Water Resources at least 10 days prior to the hearing.

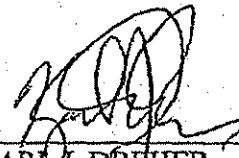
The public information meeting scheduled on October 24, 2005, will provide information about why the Director is proposing creation of the district; a timeline for district formation, operation, and expansion; and related information regarding the SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho. The Director proposes creation of the Upper Salmon Water District, which will initially be limited to Basins 71 and 72 and become operational in 2006. Upon creation of the water district, a meeting of the holders of water rights within the district will be held during the spring of 2006 for the purpose of electing a watermaster and conducting other business necessary to initiate operation of the district. The Director proposes that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) collection and recording of diversion data; (2) enforcement of water rights in priority; and (3) curtailment and enforcement of unauthorized or excessive diversions, as necessary.

The Director further proposes that the Upper Salmon Water District be expanded by 2007 to encompass all of Administrative Basins 73, 74, and 75, after the water rights in those basins have been decreed by the SRBA District Court or included in a Directors Report submitted to the SRBA District Court. The Director expects the State of Idaho to petition the SRBA District Court for interim administration in Basins 73, 74, and 75 within six months after Director's Reports are submitted to the Court for those basins. The Director plans to file Director's Reports for these basins with the SRBA District Court in 2006. The Director proposes that existing water districts in the Upper Salmon River sub-basins will be converted to sub-districts within the proposed Upper Salmon Water District.

The Director proposes that all water rights with points of diversion located within the boundaries of the proposed district be included in the district, except those used solely for domestic and/or stock water purposes. Permitted and licensed rights not decreed in the SRBA and/or not included in SRBA Director's Reports, and all future rights that may be permitted in accordance with the Wild and Scenic Rivers Agreement, are subject to inclusion within the proposed water district unless used solely for domestic and/or stock water purposes. This notice of hearing has been sent to all water right holders of record in accordance with these criteria.





If you have questions concerning this notice, please call the Department of Water Resources hotline at (800) 451-4129. You can also contact the Department's field office in Salmon at (208) 756-6644 or state office at (208) 287-4958.

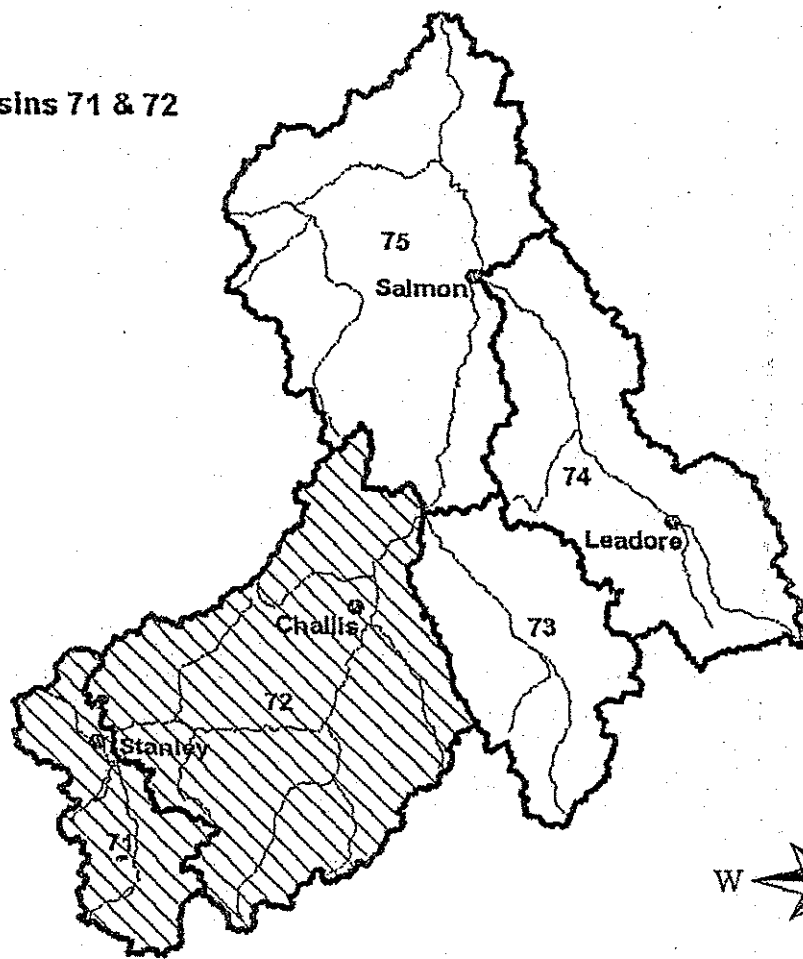
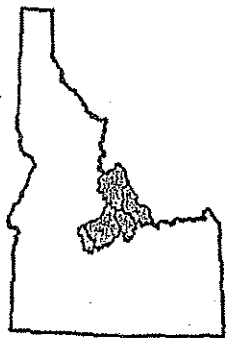
DATED this 7th day of October 2005



KARL J. DREHER
Director

PROPOSED WATER DISTRICT UPPER SALMON RIVER BASIN

-  Proposed Water District: Basins 71 & 72
-  IDWR Administrative Basins
-  Cities
-  Rivers



10 0 10 20 30 Miles

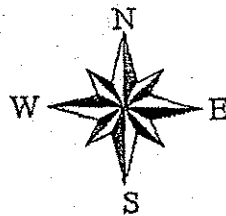


EXHIBIT C

to

Thompson Creek Mining Company's
Memorandum in Support of Motion to Clarify Service List

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE)	
UPPER SALMON RIVER BASIN WATER DISTRICT)	
(DESIGNATED AS WATER DISTRICT NO. 170))	
FOR ADMINISTRATION OF RIGHTS TO THE USE)	
OF SURFACE WATER AND GROUND WATER IN)	
<u>ADMINISTRATIVE BASINS 71 AND 72</u>)	

**AMENDED FINAL
ORDER CREATING
WATER DISTRICT NO. 170**

The Director of the Idaho Department of Water Resources ("Director" or "Department") is required by Idaho statutes to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. By statute, during the pendency of a water rights adjudication, the district court having jurisdiction for the adjudication can authorize interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may authorize the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with one or more Director's Reports as may be modified by the court's order.

On March 6, 2006, the Director issued *Final Order Creating Water District No. 170*. On March 17, 2006, Thompson Creek Mining Company ("Thompson Creek") filed *Petition for Reconsideration of the Final Order Creating Water District No. 170*. Based on review of the petition filed by Thompson Creek, the Director finds that certain Findings and Conclusions of Law should be clarified. Consequently, the Director enters this Amended Final Order Creating Water District No. 170, which (1) includes new Findings of Fact 16 and 24; (2) renumbers Findings of Fact 17-23 and 25-26; (3) revises Conclusions of Law 1, 2, 5, 7, 9, 16, 17, 18, and 20; (4) adds new Conclusions of Law 23-26; (5) renumbers Conclusions of Law 27-31; (6) revises renumbered Conclusion of Law 31; (7) revises Ordering Paragraphs 2, 3, and 5; and (8) adds new Ordering Paragraph 6.

FINDINGS OF FACT

1. On May 16, 2005, the State of Idaho ("State") filed a motion requesting an order authorizing the interim administration of water rights by the Director in the Department's Administrative Basins 71 and 72 with the Snake River Basin Adjudication ("SRBA") District Court. The State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail on May 13, 2005. The State's motion included a Notice of Hearing setting the matter for hearing by the SRBA District Court on September 20, 2005. The SRBA District Court designated the matter as SRBA Subcase 92-00021 (Interim Administration). The State's motion and supporting briefing and affidavits are a part of the

public record in the matter of creating the Upper Salmon River Basin Water District within the Department's Administrative Basins ("Basins") 71 and 72.

2. The State's motion for interim administration described in Finding 1 above states that "interim administration of water rights in Basins 71 and 72 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of water districts in these basins will provide watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law."

3. All of the water rights claimed in Basins 71 and 72 have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417.

4. On November 16, 2004, the SRBA District Court entered a partial decree for water rights no. 75-13316 and no. 77-11941. These year-round water rights are held by the United States of America on the Salmon River to fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281). Water rights no. 75-13316 and no. 77-11941 are downstream of all of the water rights in Basins 71 and 72.

5. On September 20, 2005, the SRBA District Court held a hearing on the State's motion. No objections were filed in opposition to the motion, and no party appeared in opposition to the State's motion.

6. On September 29, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basins 71 and 72, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

7. On October 7, 2005, the Director signed a notice proposing to establish a water district in the Upper Salmon River Basin within Basins 71 and 72, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed on October 11, 2005, by regular mail, to each holder of a water right within the boundaries of the proposed water district. The notice described the water district proposed to be established, the reasons therefor, the time and place for a public information meeting to be held on October 24, 2005, and the time and place for a hearing to be held on November 9, 2005, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

8. In addition, the Director caused notice to be published of the proposed action establishing the Upper Salmon River Basin Water District ("Upper Salmon Water District"), designated Water District No. 170, once a week for two (2) weeks in the following newspapers having general circulation within the area of the proposed water district: *The Challis Messenger* of Challis, Idaho, on October 13 and 20, 2005; and the *Wood River Journal* of Hailey, Idaho, on October 12 and 19, 2005.

9. The notice mailed to water right holders proposed that establishment of the Upper Salmon Water District would include all water rights authorizing the use of surface water and ground water with points of diversion located within the boundaries of Basins 71 and 72, except those used solely for domestic or stock water purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11). The Director's notice advised that a meeting of the holders of water rights within the district be held during the spring of 2006 for the purpose of electing a watermaster and conducting other business necessary to initiate operation of the district. The Director also proposed that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) collection, recording, and reporting of diversion data; (2) enforcement of water rights in priority; and (3) curtailment and enforcement of unauthorized or excessive diversions, as necessary.

10. The Director's notice also included a description of the Director's proposal to expand the Upper Salmon Water District by 2007 to encompass all of Basins 73, 74, and 75, after the water rights in those basins have been decreed by the SRBA District Court or included in one or more Director's Reports anticipated to be filed with the SRBA District Court in 2006, provided the SRBA District Court grants the Director authority for interim administration in those basins.

11. The Director proposes to include existing water districts in the Upper Salmon River sub-basins as sub-districts within the proposed Upper Salmon Water District. There are currently three existing water districts within Basin 72 and the boundaries of the proposed Upper Salmon Water District: Water District No. 72-B, Garden Creek and tributaries; Water District No. 72-C, Challis Creek and tributaries; and Water District No. 72-F, Morgan Creek and tributaries. These districts include only water rights from surface water sources, and do not include any water rights from ground water. There are no existing water districts located within Basin 71.

12. Water districts 72-B and 72-C do not administer water rights from surface water sources outside the irrigation season for those rights included within the districts, nor do these districts administer water rights during the irrigation season when the surface water sources are not under watermaster regulation. Water District 72-F has not been active until recently and has not evolved to effectively administer water rights from surface water sources either during or outside of the irrigation season for those rights included within the district.

13. The Director conducted a hearing on the proposed establishment of the Upper Salmon Water District at the Challis High School Cafeteria in Challis, Idaho, at 7:00 pm on November 9, 2005. Approximately forty people attended the hearing.

14. Prior to commencing the hearing, the Director described factors he considered in proposing to establish the Upper Salmon Water District and answered questions about the establishment of the proposed water district and how the district was envisioned to function, both over a period of approximately 60 minutes.

15. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the Director held the record open through November 21, 2005, for the submittal of written comments.

16. At the beginning of the hearing on November 9, 2005, and prior to taking oral statements, the Director gave a brief introduction and reviewed the record and procedural history for the proposed establishment of the Upper Salmon Water District. During this introduction, the Director stated that: "Notice of this hearing was mailed to each affected water right holder in the proposed district as required under the provisions of Idaho Code § 42-604." The Director also stated that notice of the hearing was published in several newspapers of general circulation within the proposed district, and that Department staff had conducted a public information meeting on October 24, 2005, to discuss the reasons for establishing the water district and to explain the duties of the watermaster for the district. The Director further stated that notice of the public information meeting was also given in both the individual notice and the newspaper notices. Transcript of Hearing Conducted November 9, 2005, p. 2, Ln. 16-27.

17. Five individuals gave oral statements for the record at the hearing in Challis, Idaho. Three written statements were submitted to the Department on or before the deadline of November 21, 2005.

18. Mr. Jack Challis of Challis, Idaho, testified on his own behalf as a water right holder on Challis Creek in Basin 72. He also stated that he is the acting secretary-treasurer for both water districts 72-B and 72-C, Garden and Challis Creeks, respectively. In past years, Mr. Challis served as the watermaster for both districts. He also currently serves as a lateral manager on the Warm Springs Canal near Challis, Idaho. Mr. Challis testified that water districts 72-B and 72-C are already in compliance with all state water district requirements, and that other areas in the Upper Salmon River Basin should comply with similar standards before districts 72-B and 72-C participate in funding a watermaster for the proposed Upper Salmon Water District.

19. Mr. Jerry Hawkins of Challis, Idaho, testified on behalf of Water District No. 72-F, Morgan Creek and tributaries. Mr. Hawkins stated that Water District No. 72-F does not agree with the Director's proposal for a basin-wide water district that provides for a watermaster having oversight for existing water districts, such as district 72-F. Mr. Hawkins stated that Water District No. 72-F has a watermaster and secretary-treasurer, and that if district 72-F needs to answer to the Department, then it can do so through the existing Department employee based in Salmon, Idaho, rather than the water right holders contributing to the funding for a watermaster of a basin-wide water district. Mr. Hawkins also stated that Water District No. 72-F concurs with prior written comments submitted to the Department by certain water right holders from existing water districts in Basins 73, 74, and 75, which recommended that if the Upper Salmon Water District is established the watermaster should be a direct employee of the Department and paid by the State of Idaho.

20. Mr. Blair Kauer of Leadore, Idaho, testified on his own behalf. Mr. Kauer stated that he holds water rights in water districts 74, 74-W, and 74-Q, all in Basin 74. Mr. Kauer stated that he agreed with the need for water districts, but that it is not necessary to have another watermaster with oversight for other existing water districts in the Upper Salmon River Basin. He further stated that water districts in Basin 74 do not need to be in the proposed Upper Salmon Water District, or any proposed expansion of such district. Mr. Kauer also stated that water district assessments should be based on water rights held, not the amount of water diverted.

21. Mr. James Whittaker of Leadore, Idaho, testified on his own behalf but stated for the record that he is an advisory committee member for both Water District No. 74-W and Water District No. 74-Z. Mr. Whittaker stated that most water districts in Basin 74 do an adequate job of regulating themselves. Mr. Whittaker did not oppose appointment of a watermaster for the proposed Upper Salmon Water District at the Department's expense for a period of two years, as proposed by the Director, but that after two years there should not be a need for a basin-wide watermaster that has oversight for existing water districts because watermasters in those districts should be better trained and any problems after that point in time could be addressed by those watermasters and Department staff, including the Department's employee based in Salmon, Idaho.

22. Ms. Katie Breckenridge of Picabo, Idaho, testified on her own behalf. Ms. Breckenridge holds water rights in Basin 71. In her testimony, Ms. Breckenridge distinguished between areas in the Upper Salmon River Basin, like sub-basin 71, where diversions of water are not being measured or administered, and other areas within Basin 72 and 74 where existing water districts may be adequately measuring and regulating diversions of water. Ms. Breckenridge recommended that areas in Basin 71 and 72 that are not currently included in any water district where there are no watermasters measuring and reporting diversions be prioritized for inclusion in any new water district. She recommended that areas not currently within a water district be brought into compliance within two years, and then the Department and Upper Salmon River Basin water right holders could re-evaluate whether to organize under one district.

23. The Director received written comments from Mr. Scott Campbell, attorney for Thompson Creek Mining Company ("Thompson Creek"). Thompson Creek comments are summarized as follows:

- a. The Director failed to comply with the mandatory notice requirements of Idaho Code § 42-604, because the notice gave no explanation of the reasons for creating the water district;
- b. The public record does not support a determination by the Director that creation of the district is "required in order to properly administer uses of the water resource" as required by Idaho Code § 42-604;
- c. The Director cannot legally determine that a water district is "required in order to properly administer uses of the water resource" because an SRBA District Court order dated November 18, 2004, provides that a stipulated agreement involving the State of Idaho, the United States of America, and other parties in the matter of the Wild and Scenic Rivers Act Claims (Consolidated Subcase No. 75-13316), "shall not affect the rights of Thompson Creek or any other non-signatory party to participate in and object to any motion for interim administration, proceeding for creation of a water district, or other administrative action or other judicial action proceeding affecting their water rights or their use, diversion, or measurement of water;"

- d. The Director has no legally supportable basis for creation of the proposed water district because he cannot rely upon the provisions of the SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho to justify creation of the district, and because the order of the SRBA District Court dated November 18, 2004, provided that the provisions in the Wild and Scenic Rivers agreement relative to water rights administration "shall not affect the disposition or review of such proceedings;" and
- e. No administration of the Thompson Creek water rights is necessary "to properly administer the uses of the water resource" because the rights held by the United States for the purposes of the Wild and Scenic Rivers Act are subordinated to Thompson Creek's rights.

24. Thompson Creek also filed a petition for reconsideration March 17, 2006, reiterating many of the same issues raised in its written comments described in Finding 23.

25. The Department also received written comments from Mr. James Hawkins of Water District No. 72-F, Morgan Creek and tributaries. The Department received a petition from Mr. Hawkins dated May 19, 2005, on behalf of Water District No. 72-F seeking inclusion of certain water rights and diversions from the Salmon River near its confluence with Morgan Creek. This petition was submitted to the Department following a meeting that the Department held with representatives of existing water districts in the Upper Salmon River Basin in February of 2005 regarding the potential establishment of the Upper Salmon Water District. Mr. Hawkins submitted additional comments to the Department dated November 21, 2005, and received by the Department on November 28, 2005. The latter comments expressed concerns about overlapping duties with existing watermasters and additional costs resulting from appointment of a "super" watermaster. Mr. Hawkins' second letter urges using local watermasters to collect data; encourages the Director to look at creating water district boundaries that go beyond the "normal" boundary of a drainage area such as Morgan Creek or Challis Creek; and recommends that "lockable" measuring device requirements be phased in over a reasonable period of time, such as two to three years.

26. The Department also received written comments from representatives of existing water districts in Basins 73, 74, and 75 on September 26, 2005. The comments were submitted in response to a steering committee meeting organized by the Department in September of 2005 with representatives of water right holders in the Upper Salmon River Basin regarding establishment of the Upper Salmon Water District. The comments submitted by the water districts' representatives recommends that the watermaster for the Upper Salmon Water District be a direct employee of the Department at no additional costs to either the Department or water right holders who are affected by creation of the water district. The comments further recommend creation of sub-districts where deputy watermasters are elected and compensated by water right holders in each sub-district. A number of other detailed recommendations were proposed regarding watermaster and deputy watermaster duties, as well as headgate and measuring device requirements.

CONCLUSIONS OF LAW

Statutory Authorities

1. Idaho law declares all surface and ground waters in the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. See Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director has the statutory responsibility to administer the use of surface and ground water in the state so as to protect prior surface and ground water rights. See Idaho Code §§ 42-103, 42-202(1), 42-226 and 42-237a.g.

3. The Director has the responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

4. The Director is authorized to form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer uses of the water resource. See Idaho Code § 42-604.

5. Idaho Code § 42-1417, *General adjudication – Interim administration of water rights*, provides authority to the district court having jurisdiction over a general water rights adjudication to authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code. Idaho Code § 42-1417(1) states, in pertinent part:

The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code:

- (a) in accordance with the director's report or as modified by the court's order;
- (b) in accordance with applicable partial decree(s) for water rights acquired under state law;
- (c) in accordance with applicable partial decree(s) for water rights acquired under federal law.

Idaho Code § 42-1417(4) states, in pertinent part:

After entry of the district court's order for interim administration, the director may form a water district pursuant to chapter 6, title 42, Idaho Code.

Response to Testimony, Written Comments, and Petition for Reconsideration

6. Most of the testimony at the hearing in Challis Idaho conducted on November 9, 2005, and written comments submitted to the Department, raised concerns about inclusion of existing water districts as sub-districts in the proposed Upper Salmon Water District. Concerns

about the funding required for the watermaster of the Upper Salmon Water District and the oversight of watermasters for existing water districts were stated. Additional concerns regarding the duties of the Upper Salmon Water District watermaster with respect to the duties of existing watermasters were also identified, and the need to include existing water districts in the Upper Salmon Water District was questioned. Much of the testimony asserted that existing districts are already compliant with state law and Department requirements. Recommendations were made both in oral testimony at the hearing and in written comments to the Department that the costs for the Upper Salmon Water District watermaster should be borne by the Department.

7. In response to the hearing testimony, the written comments submitted on behalf of Water District No. 72-F, the written comments submitted on behalf of holders of water rights in existing water districts in Basins 73, 74, and 75, and the historic records of the water districts in Basins 72, 73, 74, and 75 on file at the Department, the Director concludes that during the irrigation season for the water rights in some of the existing water districts in Basins 72, 73, 74, and 75, the statutory requirements of Chapter 6, Title 42, Idaho Code, are mostly being met, while in other water districts in the Upper Salmon River Basin some or many of the statutory requirements are not being satisfied. For example, surface water diversions in some of the existing districts lack adequate measuring devices and controlling headgates, are not measured or recorded on a regular basis, or are not monitored or regulated during portions of the irrigation season. Additionally, some of the existing water districts do not maintain adequate measurement records, annual watermaster reports are not always complete or timely submitted, and some existing water districts have been inactive for many years. None of the existing water districts enforce limitations of surface water rights outside of the irrigation season for the rights, and none of the existing water districts regulate water rights diverting from ground water.

8. Given that: (1) there are no water districts in Basin 71; (2) the administration of surface water rights in the existing water districts in Basin 72 is often inconsistent; (3) none of the existing water districts in Basin 72 administer surface water rights outside of the irrigation season for those rights or during the irrigation season when the surface water sources are not in regulation; and (4) none of the existing water districts in Basin 72 regulate diversions from ground water; the Director concludes that there should be one water district created that encompasses all of the water rights within the Upper Salmon River Basin, and that the existing surface water districts in Basin 72 should be designated as sub-districts, in order to provide consistent and effective administration of water rights from both surface water sources and ground water sources year-round throughout the Upper Salmon River Basin.

9. Existing water districts in Basin 72, which now will be sub-districts within the Upper Salmon Water District, will each continue to function as water districts and continue to elect their own watermasters, who will serve as deputy watermasters under the watermaster for the Upper Salmon Water District, and adopt their own budgets for purposes of measuring, recording, reporting, and regulating surface water diversions within their districts. A sub-district that adequately measures, records, reports, and controls diversions should not be subject to future assessments to fund the watermaster for the Upper Salmon Water District for purposes of measuring, recording, reporting, and regulating surface water diversions within that sub-district. However, each sub-district may be subject to future assessments for costs associated with oversight of that sub-district. Oversight costs may include, but may not be limited to, technical assistance, enforcement assistance, training of deputy watermasters, collection and quality

control review of diversion data, periodic field checks of diversions, periodic or miscellaneous field calibration measurements of measuring devices, review of annual sub-district and budget reports, coordinating distribution of water to the Wild and Scenic River minimum instream flow water rights for the Salmon River as necessary, and general coordination with federal, state, and local agencies regarding water district operations, water use, and water right administration issues.

10. The written comments and the petition for reconsideration submitted by Thompson Creek both raise several legal or administrative issues. First, Thompson Creek alleges that the Director failed to comply with the mandatory notice requirements of Idaho Code § 42-604 because the notice gave no explanation of the reasons for creating the Upper Salmon Water District. As required by Idaho Code § 42-602, the notice described the proposed action, the reasons for the proposed action, and the time and place of a public hearing concerning the proposed action. The notice stated that the reason for the hearing was to consider the proposal to create a permanent water district in order to protect senior water rights. The notice referenced the SRBA District Court order that approved interim administration of the rights by the Director to protect senior water rights. The notice also provided a website link to a copy of the SRBA District Court order. The court's order found that the Director had sent individual notice of the State's Motion for Interim Administration and supporting documents, as well as notice of the SRBA Court's scheduled hearing on the matter, to all affected right holders in Basins 71 and 72.

11. Based on the State's motion for interim administration described in Finding 1 and its presentation to the SRBA District Court on September 20, 2005, the court made the following findings of fact and conclusions of law in its *Order Granting State's Motion for Order of Interim Administration of Water Rights in Basins 71 and 72*, dated September 29, 2005:

The State of Idaho has complied with the notice and service requirements of Idaho Code §§ 1417(2)(b) by serving of the State's *Motion* and related documents on those claimants in IDWR Basins 71 and 72 reasonably determined to be adversely affected by entry of the requested *Order*. Interim Administration in IDWR Basins 71 and 72 in accordance with the *Director's Reports* and *Partial Decrees* for water rights is reasonably necessary to efficiently administer water rights and protect senior water rights. The establishment of Water Districts for Basins 71 and 72 will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.

The creation of water districts will provide for a mechanism for administration, regulation, and enforcement of water rights, including ground and surface water rights.

12. The Director's notice also provided the following information regarding the necessity for creating a water district in Basins 71 and 72:

The Director proposes that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) collection and recording of diversion data; (2) enforcement of water rights in priority; and (3) curtailment and enforcement of unauthorized or excessive diversions, as necessary.

13. The Director concludes that the notice required by Idaho Code § 42-604 was sufficient. The notice gave the time and place of a hearing, and provided a time period within

which written comments could be submitted. The notice stated that the proposed hearing was to consider the creation of a permanent water district in order to protect senior water rights. The notice informed affected right holders that the SRBA District Court had issued an order for interim administration of water rights in Basins 71 and 72 and provided a reference to a copy of the order. Finally, the notice listed specific watermaster duties in the proposed water district.

14. Thompson Creek's second allegation is that the public record does not support a determination by the Director that creation of the district is "required in order to properly administer uses of the water resource" as required by Idaho Code § 42-604.

15. The public record in this case includes the State's motion for Order of Interim Administration of Water Rights in Basins 71 and 72, together with supporting documentation, dated May 16, 2005; the SRBA District Court's transcript of the hearing on the State's motion for Order of Interim Administration of Water Rights in Basins 71 and 72, held on September 20, 2005; the SRBA District Court's *Order Granting the State of Idaho's Motion for Order of Interim Administration of Water Rights in Basins 71 and 72*, dated September 29, 2005; the Director's Notice of Public Information Meeting and Hearing in the Matter of the Proposed Creation of a Water District in the Upper Salmon River Basin Area in Administrative Basins 71 and 72, signed by the Director on October 7, 2005, and mailed on October 11, 2005; the transcript of the Director's hearing regarding creation of the proposed water district held on November 9, 2005, in Challis, Idaho; and written comments submitted for the record on or before November 21, 2005.

16. Justification for creation of the proposed district "to efficiently administer water rights and protect senior water rights" is provided in the Department's Notice of Public Information Meeting and Hearing in the Matter of the Proposed Creation of a Water District in the Upper Salmon River Basin Area in Administrative Basins 71 and 72, the SRBA District Court's *Order Granting Interim Administration*, and the State's motion for interim administration. The State's motion for interim administration and the Department's notice of public information meeting and hearing were served on all affected parties by regular U.S. mail, as required by Idaho Code §§ 42-6-4 and 42-1417(1). The Director concludes that the public record supports a determination that creation of the district is "required in order to properly administer uses of the water resource" as required by Idaho Code § 42-604.

17. Thompson Creek next alleges that the Director cannot legally determine that a water district is required because an SRBA District Court order dated November 18, 2004, provides that paragraph 2 of the stipulated agreement between the State of Idaho, the United States of America, and other parties in the matter of the Wild and Scenic Rivers Act Claims "shall not affect the rights of Thompson Creek or any other non-signatory party to participate in and object to any motion for interim administration, proceeding for creation of a water district, or other administrative action or other judicial action proceeding affecting their water rights or their use, diversion, or measurement of water; nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings."

18. The SRBA District Court's order dated November 18, 2004, provides that Thompson Creek or other non-signatory parties of the Wild and Scenic Rivers agreement have rights to participate in and object to a motion for interim administration, or other administrative

proceeding for creation of a water district. The court's order does not prohibit the Director from determining that a water district is necessary. The court's order of November 18, 2004, does not prohibit the creation of a water district in the Upper Salmon River Basin, nor does it place limits on how the Director shall create a water district in the Upper Salmon River Basin.

19. Thompson Creek further argues that the Director has no legally supportable basis for creation of the proposed water district because he cannot rely upon the provisions of the SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho to justify creation of the district, and because the SRBA District Court's Order dated November 18, 2004, provided that the provisions in the Wild and Scenic Rivers agreement relative to water rights administration shall not "affect the disposition or review of such proceedings."

20. The Director relies on the authority provided by Idaho Code § 42-604 for creation of the proposed water district. Idaho Code § 42-604 authorizes the Director to create a water district for streams or water supplies for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. As stated in Finding 3, all of the water rights claimed in Basins 71 and 72 have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417. The Director proposes creation of a water district in Basins 71 and 72 for efficient administration of surface and ground water rights.

21. Next, Thompson Creek alleges that administration of Thompson Creek's water rights is not necessary "to properly administer the uses of the water resource" because the United States' Wild and Scenic River rights are subordinated to Thompson Creek's rights.

22. The Director finds that Thompson Creek is the holder of water rights to which the United States' Wild and Scenic River rights that have been partially decreed by the SRBA District Court are subordinated. This fact alone, however, does not preclude the need for creation of a water district, nor does it provide a reason to eliminate Thompson Creek's rights or other water rights to which the United States' Wild and Scenic River rights are subordinated. On the contrary, creation of the proposed water district is intended to fulfill the Director's statutory responsibilities to administer water rights for the purpose of protecting all prior water rights and distributing water in accordance with the prior appropriation doctrine as established by Idaho law.

23. The petition for reconsideration filed by Thompson Creek on March 17, 2006, states that "since all of the water rights within the proposed water district boundaries have not been adjudicated, the Director may not utilize his authorities under Idaho Code § 42-604 to create the Upper Salmon Water District." This argument is without merit and ignores Idaho Code § 42-1417 which clearly authorizes the Director to create a water district after the entry of the district court's order for interim administration, and that interim administration may be granted by the district court in accordance with a director's report or partial decrees acquired under state or federal law.

24. Thompson Creek's petition for reconsideration further states that there is no legal authority for the creation or recognition of "sub-districts" within a water district. This argument is without merit since "sub-districts" remain water districts pursuant to Idaho Code §§ 42-602 et seq. and Idaho Code § 42-604 specifically provides that:

The Director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource.

The designation of existing water districts in Basin 72 as "sub-districts" in Water District No. 170 is within the discretionary authority of the Director under Idaho Code § 42-604 to "create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource." Conclusion of Law No. 7 of the Final Order Creating Water District No. 170 and the revised Conclusion of Law No. 7 of this Amended Order provide the necessary reasons as to why the designation of sub-districts is required in order to properly administer uses of the water resource within Water District No. 170.

25. Thompson Creek's petition for reconsideration alleges that "sub-districts" and other features of Water District No. 170 established by the Director's Final Order are provisions within paragraph 2 of the SRBA Wild and Scenic Rivers Stipulated Agreement and that the inclusion of any such provisions from paragraph 2 of the stipulated agreement violates the SRBA District Court's order dated November 18, 2004. Again, as stated in the revised Conclusion of Law No. 18, the court's order of November 18, 2004, with respect to paragraph 2 of the stipulated agreement, does not prohibit the creation of a water district in the Upper Salmon River Basin nor does it place limits on how the Director shall create a water district in the Upper Salmon River Basin. Moreover, Thompson Creek's assertion that the Department is relying on the provisions of paragraph 2 of the stipulated agreement to create Water District No. 170 is without merit given that the Department either created or is in the process of creating water districts in other areas of Idaho that have the same or similar features established by the Final Order Creating Water District No. 170.

26. The remaining issues raised by Thompson Creek provide no new or additional reasons why Water District No. 170 should not be created. The Department has revised, clarified, or added certain Findings of Fact and Conclusions of Law in this Amended Order based on some of the points raised in Thompson Creek's petition for reconsideration. All other concerns and issues raised in Thompson Creek's petition for reconsideration were raised in the comments previously submitted by Thompson Creek. The Director concludes that those issues have been adequately addressed in either the Director's Final Order dated March 6, 2006, or this Amended Order. Thompson Creek requests the Director to issue a revised order not creating the Upper Salmon Water District.

District Creation

27. Based on the statutory authorities described in preceding conclusions of law, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to Idaho Code § 42-1417, the Director's authority under chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should create the Upper Salmon Water District to administer water rights within Administrative Basins 71 and 72, as shown on the map appended hereto as Attachment A.

28. The Director concludes that the Upper Salmon Water District should be formed on a permanent basis and operated to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

Administration of Affected Water Rights

29. The Director concludes that immediate administration of water rights, other than de minimis domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

30. The Director concludes that the watermaster for the Upper Salmon Water District created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Measure, record, and report the diversions under water rights;
- b. Enforce the water rights in priority;
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); and
- d. Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within the Upper Salmon Water District.

31. The Director concludes that the Upper Salmon Water District created by this order shall include the following organizational features:

- a. Election and appointment of a single watermaster for the water district. The water right holders may elect to have the district contract with the Department to provide watermaster services. Under a district contract with the Department, the watermaster will be a direct employee of the Department.
- b. Existing water districts in Basin 72 shall be combined with the Upper Salmon Water District pursuant to Idaho Code 42-604, and designated as sub-districts of the Upper Salmon Water District, or as otherwise determined by the Director.
- c. The water right holders may select a Water District Advisory Committee that includes, but need not be limited to, representation from advisory committees of existing water districts.

- d. The watermaster is authorized to appoint assistants or deputy watermasters as deemed necessary by the water users. Assistants are subject to appointment by the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be other Department employees, or watermasters elected by sub-districts.
- e. Holders of water rights in the water district shall be assessed the costs for operating the Upper Salmon Water District directly by the water district watermaster.
- f. Water districts that are organized as sub-districts may collect assessments to pay the pro-rata expenses of the Upper Salmon Water District, if any, on behalf of the diversions and water right holders within their respective sub-district to avoid individual water right holders being assessed by both the sub-district and the Upper Salmon Water District.
- g. The Department will waive the requirement of compensation for providing watermaster services during 2006 and 2007 if the water right holders elect to have the Upper Salmon Water District contract with the Department to provide watermaster services.

ORDER

The Director enters the following Order for the reasons stated in the foregoing Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED as follows:

1. The Upper Salmon River Basin Water District, designated as Water District No. 170, is hereby established to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than *de minimis* domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11), within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference.
2. Water District No. 72-B (Garden Creek and tributaries), Water District No. 72-C (Challis Creek and tributaries), and Water District No. 72-F (Morgan Creek and tributaries), are hereby designated as sub-districts within Water District No. 170. These sub-districts shall continue to meet annually to elect a watermaster, adopt a budget, and select an advisory committee. These sub-districts shall be responsible for distribution of surface water rights that have been reported or partially decreed in the SRBA and located within the respective sub-districts. For 2006, water right holders within the sub-districts shall meet at a time and place as normally determined by the district.
3. For 2006, the water right holders within Water District No. 170 shall meet at a time and place to be announced by the Director to elect a watermaster, consider selection of an

advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

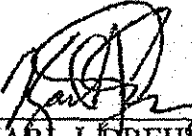
4. The watermaster for Water District No. 170 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Measure, record, and report the diversions under water rights;
- b. Enforce the water rights in priority;
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); and
- d. Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within the Water District No. 170.

5. The Director shall issue separate orders, as necessary, requiring the installation of measuring devices and lockable controlling works for diversions within Water District No. 170. Such orders will allow installations to be phased in over a period of one to two years from the date of issuance, thereby allowing a sufficient period of time in which to comply with such orders.

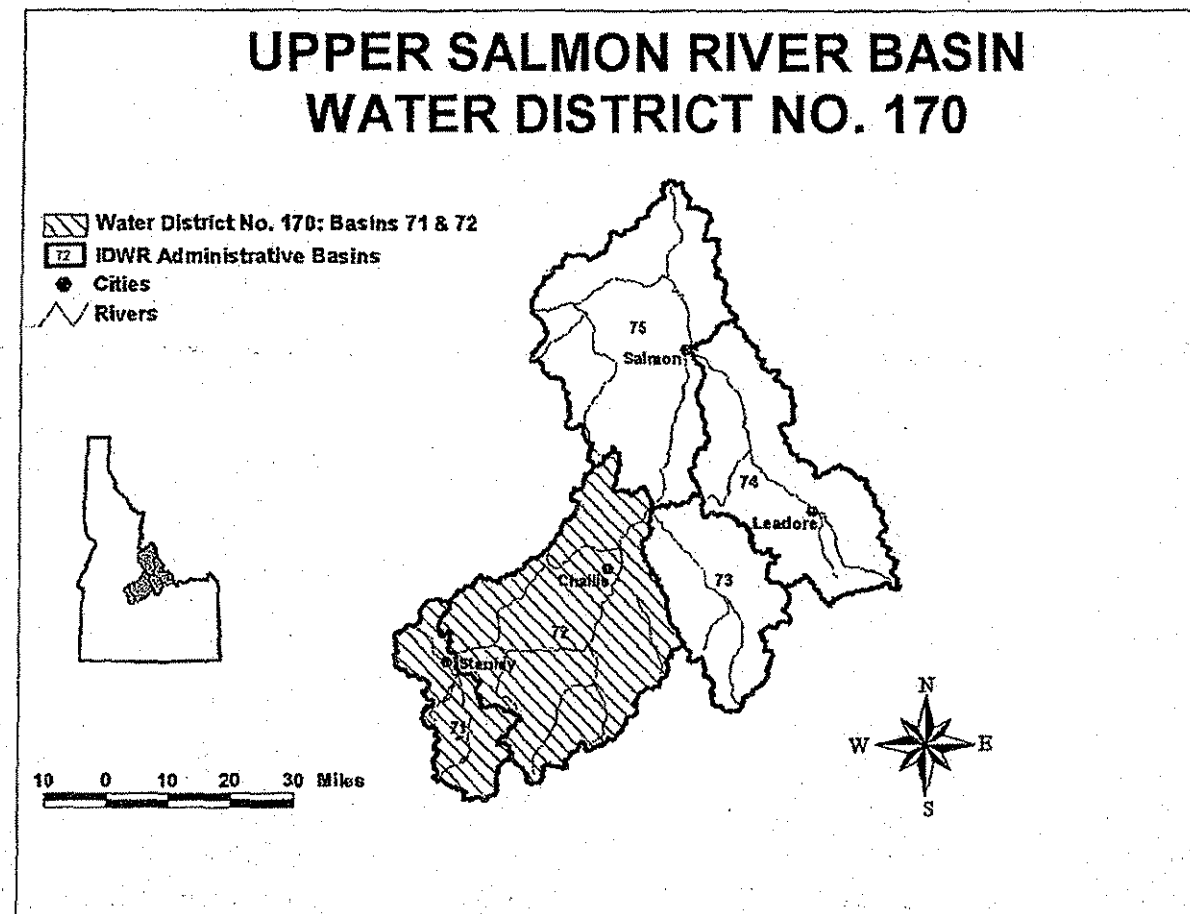
6. The relief requested under the *Petition for Reconsideration of the Final Order Creating Water District No. 170* filed by Thompson Creek on March 17, 2006, asking that the Director issue a revised order not creating the Upper Salmon Water District, is denied.

DATED this 6th day of April 2006.




KARL J. DREHER
Director

ATTACHMENT A



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 2006, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: www.idwr.idaho.gov. Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

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EXHIBIT D

to

Thompson Creek Mining Company's
Memorandum in Support of Motion to Clarify Service List

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)
CREATION OF A WATER DISTRICT IN)
THE UPPER SALMON RIVER BASIN AREA)
IN ADMINISTRATIVE BASINS 71 & 72)

TRANSCRIPT OF HEARING
Conducted November 9, 2005, Challis, Idaho
Before Presiding Officer Karl J. Dreher
Director, Idaho Department of Water Resources

Transcribed by Patsy McGourty
Administrative Assistant
Department of water Resources

Proceedings transcribed from electronic sound recording.

1 KARL DREHER: Good evening. I am Karl Dreher, Director of the Idaho Department of
2 Water Resources. I am serving as the presiding officer in this matter which deals with
3 the creation of a water district in the Upper Salmon River Basin. The matter concerns the
4 creation of this proposed district that would include both department administrative
5 basins 71 and 72. The provisions of Idaho Code § 42-604 require that this hearing be
6 held prior to the creation of a water district by the director of the Department of Water
7 Resources. The hearing is being conducted on November 9, 2005. We went on the
8 record at approximately 8:10 p.m. This meeting began shortly after 7:00 p.m. but was
9 preceded by a period of questions and answers on related matters.

10 The purpose of this hearing is to provide affected water right holders or their
11 representatives an opportunity to make an oral statement on the record stating their
12 position, views or concerns regarding the creation of the proposed water district. For the
13 purposes of this hearing persons making statements do not need to be sworn in nor will
14 they be subject to cross-examination. All persons signing up to speak will be heard
15 before others are heard and all persons wishing to speak once will be heard once before
16 anyone speaks a second time. Notice of this hearing was mailed to each affected water
17 right holder in the proposed district as required under the provisions of Idaho Code § 42-
18 604. In addition, notice was published in the *Challis Messenger* and the *Big Wood River*
19 *Journal*, two newspapers of general circulation within the proposed district. This hearing
20 was preceded by a public information meeting that was held on October 24, 2005. That
21 meeting was conducted by Mr. Dave Tuthill and Mr. Tim Luke of the Department of
22 Water Resources and it too was noticed along with this hearing in the individual notices
23 sent to individual right holders as well as the notice that was published in the *Challis*

24 *Messenger* and the *Big Wood River Journal*. The purpose of the public information
25 meeting was to determine the reasons for the creation of the proposed water district and
26 to describe the duties that the watermaster of the district would be expected to carry out
27 under the supervision of myself or the person in my position.

28 Assuming that there are no further questions, we're now at the point to where we
29 need to take formal statements and comments from those persons who wish to be heard at
30 this time. So we'll take these in order of the people that signed up. The first individual is
31 J.R. Challis if you would come forward and state your name and address for the record.
32 Go ahead and have a seat.

33

34 CHALLIS: Director Dreher my name is Jack Challis. I'm a water right owner in Challis
35 Creek Water District 72C. Also currently serve as secretary-treasurer for both water
36 district 72C and 72B and have served in past years as watermaster for both of these
37 districts and currently continue to serve as watermaster for the Warm Spring Canal water
38 users. Though my testimony this evening is my own, I am confident that put to a vote it
39 would represent the opinion of the vast majority of all water right owners in both districts
40 72C, having 86 right owners representing 158 surface water rights, as well as 72B having
41 32 water right owners representing 60 surface water rights.

42 In 1997 our district 72C took the initiative with the help of IDWR personnel to
43 GPS and numerically identify all diversions in our drainage. At the same time while
44 utilizing duly approved district resolutions all diversions were mandated within a
45 reasonable time frame to be brought into compliance with IDWR Water Master
46 Handbook Construction Guidelines, as well as Idaho Code, with regard to lockable head

47 gates and approved measuring devices. This was completed by our water district as well
48 as 72B in 1997. Simultaneously, we began to develop a data base software program
49 subsequently dubbed watermaster whereby we could 1) maintain complete records of
50 individual water right owners, both past and current, as well as designated authorized
51 representatives in cases of out-of-state or off premises water right owners; 2) key to each
52 owner their respective water right, their purchase date, their maximum allowable cfs and
53 the priority date; 3) key water right and source to each diversion or diversions designated
54 by the right to receive such deliveries; 4) allow an ongoing entry of flows throughout the
55 irrigation season as logged and submitted by our watermaster for each water right at their
56 respective point of diversion; and 5) configure data base extraction procedures whereby
57 water deliveries could be detailed and made available in hard copy or electronically in
58 virtually any format for reporting usage by owner, right, diversion, source, irrigation
59 season, and time period within any irrigation season or any combination thereof.

60 Now we are being presented with the creation of what is deemed the Upper
61 Salmon Water District though many in this proposed new district would question any
62 actual needs for such actually exists. Let it suffice to say that the majority realize, like it
63 or not, the now finalized Wild and Scenic Rivers Agreement has made this proposed new
64 district mandatory. That having been said, I like others in the proposed district have been
65 working in a steering committee created by your department to establish a workable
66 format. This effort continues but in light of the hearing tonight preceding any steering
67 committee recommendations or conclusions, I felt it necessary to bring forward facts and
68 a resulting proposal I feel should be considered in your evaluation of this new district.

69 In the presentation by the department's Mr. Dave Tuthill and Mr. Tim Luke in the
70 Upper Salmon Water District public meeting held here October 24, slides were included
71 outlining the necessity for an Upper Salmon Water District watermaster to oversee this
72 new district. Relevant discussion revealed expense to water owners for this man or
73 woman anywhere from \$70,000 to \$100,000 annually. While it was noted the
74 department, you specifically, had generously offered to provide this individual and
75 support requirements free of charge for the first two years, thereafter this expense will
76 undoubtedly have to be borne by Upper Salmon Water District water right owners. This
77 is where my concern arises. The justification for the aforementioned expense depicted by
78 Mr. Tuthill and Mr. Luke's slides outlined the obligations to which IDWR must comply
79 in order to meet conditions of the Wild and Scenic Rivers Agreement and the resulting
80 requirements of the Upper Salmon Water District watermaster and in turn all water right
81 owners. These include lockable controlling works, approved measuring devices,
82 collection and recording diversion data, enforcing water rights in priority, curtailing
83 unauthorized and excessive diversions, include surface water as well as ground water,
84 quarterly reporting of diversions, again surface water and ground water, annual reports
85 and budgets. Director Dreher, other than inclusion of the ground water information
86 easily added to our database and reporting quarterly rather than annually, a simple two-
87 hour matter of programming our current software to create such a report from data
88 already available, we can do everything you require now today. Not only that, we could
89 provide the same data back to 1997. No less important and the obvious learning curve
90 we faced were done at our sole expense. In this light, how is it logical much less fair that

91 water district 72C as well as 72B should be burdened to pay for the other water users in
92 the new Upper Salmon Water District to comply with everything we can already do?

93 One last point. I'm going to take the liberty of anticipating your suggestion that
94 by providing the Upper Salmon Water District watermaster the first two years this will
95 allow sufficient time to even the playing field, as to say, and allow the others to catch up.

96 With all due respect, IDWR has not been able to get anyone in the proposed Upper
97 Salmon Water District other than 72C and 72B to comply for the many, many years
98 Idaho Code has always mandated most of these exact procedures. Frankly, we consider it
99 highly unrealistic that in the next two years the department can possibly get this done.

100 However, if we are proven wrong, and you get it done, we should then unquestionably
101 contribute our proportional share. On the other hand, if you cannot, we do not feel we
102 should be forced to participate in any of the costs until all Upper Salmon Water District
103 water right owners are in compliance with what we have already done and will continue
104 to do in the future. Thank you.

105 DREHER: Thank you. Okay, Jerry Hawkins.

106 HAWKINS: Mr. Director, I'm going to be short. I might even write mine out. I can't
107 remember that much. I'm Jerry Hawkins. Live here in Challis. I'm here for Water
108 District 72F and I don't have a lot to say except on the concerns of putting an upper basin
109 watermaster over that we have to pay for up in here. When Mr. Foster's already over
110 there and we view him as the man to go to in the upper basin and since our watermaster
111 and our secretary-treasurers run the districts that are established and the one that will be
112 required will have to compile and keep documentation and information that the
113 Department of Water Resources need, we feel that there is no need for the upper basin

114 watermaster because if the district needs to answer to the department, that can be done
115 through Mr. Foster at the Salmon office and eliminate the middle man in a role there that
116 we'd have to pay for out of our pocket.

117 Now so many of the people that we've been dealing with here the last few years
118 especially around through the many challenges the state's been up against with the
119 landowners and water users here, we understand about a head gate and a measuring
120 device because we're going to go there through a court. One or the other is where we're
121 going and we have no problem with that and we understand it and as a matter of fact, the
122 people in a lot of areas are supportive of it since they fully understand the position of the
123 state. But we do not support the upper basin watermaster and have to pay for him. We
124 would talk to the department to give us Mr. Foster here, let us work with him. Let him be
125 our watermaster and we've asked to sign on with the recommendation that was made by
126 73, 74 and 75 that put together here awhile back and outlined that a plan of what we
127 would like to go to and we would fully like to support him in this and we hope that you
128 all would support us in it. I do want to thank you for having the town meetings in closing
129 here because it saved us and the people around here a lot of travel time and stuff and put
130 it on yawl's back instead of just having a regional meeting and have us come down to em.
131 We really appreciate that and thank you for listening.

132 DREHER: Thank you. Blair.

133 KAUER: Director Dreher and those concerned, my name is Blair Kauer. I'm a person
134 within the boundaries of water district 74, 74W, 74Q and several other water districts.
135 We have several water districts in Basin 74, more than is on my toes and feet, more than I
136 can count. The creation of water districts is necessary certainly for the administration of

137 water, but particularly in water district 74, all of the appropriated water is being mastered.
138 It just isn't necessary to have another watermaster mastering something that isn't
139 necessary. That's the whole reason for creating a water district is to master appropriated
140 water; therefore, I do not feel that water district 74 needs to be an Upper Salmon Basin
141 water district. Whose senior water rights are not already being protected?

142 Another question that I had is who's going to pay for that Upper Salmon Basin
143 watermaster once it is created and of course, and if it is created under one person, one
144 vote regardless of how much water they own, they would have an equal share of election
145 for that watermaster. In my opinion, also, as we do in water district 74, we pay the
146 assessment on water right held and it works very well for paying that watermaster under
147 the water right held, not the water right used. It's a good system. And those particular
148 statutes I think can be created in this water district and function quite well.

149 My last comment is if we don't need it, we don't want it and I guess we don't
150 want it in water district 74. Thank you.

151 DREHER: Mr. Kauer, you did not state your address for the record.

152 COWER: The address is Box 111, Lemhi, Idaho 83465.

153 DREHER: Thank you. Okay, I believe that's everybody that signed up to testify that
154 didn't subsequently indicate that they had decided not to testify. Is there anybody else
155 here... oh, wait a minute. I'm sorry, Mr. Whitaker, if you would like to testify, please.

156 WHITAKER: Director Dreher, I'm James Whitaker, Leodore, Idaho, P.O. Box 240. I'm
157 on the advisory board of 74W and 74Z, and I guess the thing I kind of want to
158 reemphasize... I disagree somewhat with a little that's been said here but I think we're
159 pretty unanimous on this Upper Salmon River Basin head watermaster as far as who's

160 going to pay for him and who's deriving the benefit. And as you've already indicated
161 that the Forest Service and the Idaho Dept. of Water Resouces, the main reason we're
162 having the watermaster is to make sure that we're not irrigating any ground that's not
163 supposed to be irrigated or we're not diverting any water that's not supposed to be
164 diverted. Well, in most of these districts, we're pretty good policemen ourselves on our
165 neighbors and I feel like that the concept has been working real good in our area the way
166 we have it in essence... over there we've got the sub districts 74W and 74Z, and if we've
167 had a problem as far as measuring or training or something, we've called in Rick Sager
168 who is on the Lemhi River or Bob (Foster) to come or both of them to come out and
169 straighten that thing out and I feel likeI think it's good to have that the first two years
170 to get this whole organization put together and I agree that the state should pay for that at
171 that point in time, but after we kind of get this thing evolved and I think as you've
172 indicated, it's kind of open to do things, but with the days that we've got computers and
173 we get these people trained ... in essence I can't see why we probably need anybody that
174 we don't presently have in the system already. We might just need to expand Bob's area
175 over the whole area or something like that because I realize that 71 and 72 probably
176 haven't been receiving this same coverage, but I feel like that 73, 74 and 75 apparently
177 have, and we're pretty well already, like I say, policing each other, and if we have a
178 problem, why we've always called in your personnel probably out of the Eastern Idaho
179 office and they've come up and went through with the watermaster and we've had that
180 done on our tributaries... just as in the past when somebody isn't happy, why we've had
181 them come up and go with the watermaster and the advisory board and then we'd go out
182 and go up and check the ditches and if we needed to put in and block somebody's head

183 gate, or if we needed a measuring device fixed, why we got it fixed, but I think we're
184 way over emphasizing the need down the road for this fellow that's going to be requiring
185 a lot of money to police us in essence. And if that's his job, merely police us and train
186 us, I think he can train us in a couple years and I think that we've got the training with
187 Bob and Rick already on the ground. Those guys can come; they're close to us. I don't
188 see a need after a couple of years of possibly having this head watermaster in at least why
189 we can't just go to the water department if we have problem. I think that we ought to give
190 that some real consideration not cut in stone that we're going to have that and assume that
191 responsibility of paying for him down the road, but anyway with that, thank you, Director
192 Dreher, for giving me the opportunity to testify tonight and I think we're heading in the
193 right direction, and I appreciate the effort that you folks have made working with the
194 steering committee, and coming up and giving everybody an opportunity to ask questions
195 and hopefully work this thing out right to begin with. I realize that we've come to a point
196 in time when water is very important and that we need it tied to us and with that, thanks
197 again.

198 DREHER: Thank you. Okay, now is there anybody here who's had a change of heart
199 that didn't sign up to testify that now wants to testify? Okay. Please state your name and
200 address for the record.

201 BRECKINRIDGE: Katie Breckinridge, Box 685, Picabo 83348. After listening to a lot
202 of testimony and understanding very significantly that there are large portions of water
203 that have already been measured and there are already adequate water measurement
204 districts in place, I refer back to my experience in a different water management district
205 where the same scenario took place, but there were still large areas and amounts of water

206 that did not have a current way to be measured and so that became... I question now if the
207 first stage of this district could be looking at a map and including all of the area that does
208 not have a current water measurement district, a current means of measuring their water.
209 And I think a lot of that is going to fall in 71 and my understanding is that 71 and 72 are
210 the first districts that have to come on line. It sounds like 72 is well prepared. I know 71
211 is not. And if there could be a way that 71 could look in a different matter instead of
212 looking at 71 and 72, but look at all of the districts that fall under the proposed water
213 measurement districts, and identify the areas and the water users that are not currently
214 being measured, and identify that water and those water right users become the first ones
215 that have to step forward and come up with a form of measuring our water and would fall
216 under the benefit of the first two years of your offer to pay or hire a watermaster. I think
217 from that point forward we could then look at all the other areas that have the current
218 water measurement district and try to decide how we could all come together and that
219 would alleviate the strong question here tonight of why do we need to have a layered
220 system. There are large quantities of water that are already measured. There are also
221 large quantities of water that are not measured. I think we need to be able to identify
222 both of those as we move forward. Thank you very much.

223 DREHER: Thank you. Okay anybody else that did not sign up to testify that wants to
224 testify now? Is there anybody that has testified that wishes to add something or testify a
225 second time? Okay. Going once, going twice. All right.

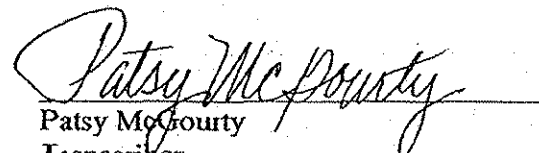
226 Given that it appears that there are no other persons that want to make a
227 statement, that will conclude the record of oral statements in this proceeding. Thank you
228 to all that did come forward to testify. The hearing record for this matter will remain

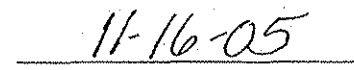
229 open for a little more than ten days through November 21st to allow time for the submittal
230 of additional written comments as provided for in the notice of this proceeding and as
231 required by Idaho Code § 42-604. After considering the entirety of the record, I will
232 issue a final order following the close of the comment period to dispose of this matter and
233 a copy of that final order will be sent by regular mail to all holders of water rights
234 affected by the order. Any water right holder who disagrees with the final order may file
235 a petition for reconsideration with me within 14 days of the service date of the order.
236 Any party feeling aggrieved by the final order may seek judicial review before the district
237 court within 28 days of the issuance of the final order or within 28 days of the action
238 taken on any petition for reconsideration. Thank you for attending. The record is now
239 closed except for the taking of additional written comments.

PROCEEDINGS CONCLUDED

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.


Patsy McGourty
Transcriber


Date

DISTRICT COURT
CUSTER COUNTY
IDAHO

2006 NOV -1 PM 3:54

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Attorneys for Thompson Creek Mining Company

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

NOTICE OF HEARING ON MOTION TO
CLARIFY SERVICE LIST

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

PLEASE TAKE NOTICE that Petitioner Thompson Creek Mining Company will
call up for hearing its Motion to Clarify Service List before the Honorable James C. Herndon, in
the courtroom of the above-entitled court at the Custer County Courthouse, Challis, Idaho, on

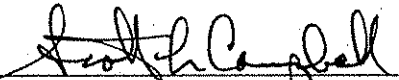
NOTICE OF HEARING ON MOTION TO CLARIFY SERVICE LIST - 1

BOL_MT2631141.1

Monday, November 20, 2006, at the hour of 3:00 p.m., or as soon thereafter as counsel can be heard.

DATED this 25th day of October, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm
Attorneys for Thompson Creek Mining
Company

DISTRICT COURT
CUSTER COUNTY
IDAHO

2006 NOV -1 PM 3:55

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

NOTICE OF SERVICE

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

I HEREBY CERTIFY that on this 31st day of October, 2006, I caused a true and
correct copy of the foregoing Notice of Service and the following documents:

1. Motion to Clarify Service List;


2. Memorandum in Support of Motion to Clarify Service List; and

3. Notice of Hearing on Motion

to be served by U.S. Postal Service, postage pre-paid, and to the addressed service list and

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Attorneys for Respondent

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE)
UPPER SALMON RIVER BASIN WATER)
DISTRICT (DESIGNATED AS WATER)
DISTRICT NO. 170))

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY)

MEMORANDUM IN RESPONSE
TO MOTION TO CLARIFY
SERVICE LIST

Petitioner,)

vs.)

IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Respondent.)

COMES NOW, the Idaho Department of Water Resources, an executive agency of the state of Idaho ("IDWR" or "Department"), by and through the undersigned deputy attorney general, and submits the following memorandum in response to Thompson Creek Mining Company's ("Thompson Creek") *Motion to Clarify Service List* ("Motion") and accompanying memorandum ("Memorandum") in support thereof.

I. INTRODUCTION

On October 31, 2006, Thompson Creek served the Department with its Motion and Memorandum. The Motion seeks "entry of an order clarifying whether Thompson Creek should serve water users within Idaho Department of Water Resources Administrative Basins 73, 74, and 75 with its *Notice of Petition for Judicial Review of the Creation of Water District No. 170* (the "Notice")." Motion at 1-2. According to the Memorandum, notice is necessary because

the Department has consistently indicated that it will expand the district to include Basins 73, 74, and 75. In order to avoid the potential for subsequent challenges to this proceeding from water right owners in Basins 73, 74, and 75, Thompson Creek believes it is appropriate to serve those parties with notice of the proceeding and allow them the opportunity to participate if they so desire. And, because Due Process rights are implicated, Thompson Creek believes that any ambiguity or uncertainty on this issue should be resolved in favor of providing such notice.

Memorandum at 7.

II. ARGUMENT

A. Only Water Users in Basins 71 and 72 are Parties to the Proceeding

Idaho Rule of Civil Procedure 84(b) states: "Judicial review is commenced by filing a petition for judicial review with the district court, and the petitioner shall concurrently serve copies of the notice of petition for judicial review upon the agency whose action will be reviewed *and all other parties to the proceeding before the agency.*" Idaho Rule of Civil

Procedure 84(b)(1) (emphasis added). The term "party" is defined by the Idaho Administrative Procedure Act as "each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party." Idaho Code § 67-5201(13). For purposes of judicial review, the Idaho Administrative Procedure Act further provides that "A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code." Idaho Code § 67-5270(3).

The Director is mandated by Idaho Code § 42-604 to create water districts: "The director of the department of water resources *shall* divide the state into water districts" Emphasis added. In order to create a water district, the Director is required to follow the parameters set forth in Idaho Code § 42-604, which ensure that those persons who will be affected by the action are afforded notice and the opportunity to be heard.¹ While Idaho Code § 42-604 obligates the Director to "divide the state into water districts," the Director cannot create a water district that encompasses "streams or water supplies whose priorities of appropriation *have not been adjudicated by the courts having jurisdiction thereof.*" Emphasis added.

The creation of Water District No. 170 for the administration of surface and ground water rights in administrative basins 71 and 72 was possible because all water rights claimed in basins 71 and 72 had either been reported to, or partially decreed by, the Snake River Basin

¹ "Before entering an order creating, modifying, or abolishing a district, the director shall, by regular mail, send notice of the proposed action to each water user in the district or proposed district. The notice shall describe the proposed action to be taken, the reasons therefore, the time and place of a hearing to be held concerning the proposed action, and provide a time period within which written comment on the action will be accepted." Idaho Code § 42-604.

Adjudication ("SRBA") District Court.² Since all water rights claimed in basins 73, 74, and 75 have not been reported or partially decreed, Idaho Code § 42-604 prevented the Director, at that time, from including those basins in Water District No. 170; thus, the need for future expansion.³

Because only water rights in administrative basins 71 and 72 could have been implicated by the Director's proposal to create Water District No. 170, only holders of water rights in those basins were served with notice and became "parties to the proceeding before the agency."

I.R.C.P 84(b)(1). Water users in basins 73, 74, and 75, therefore, could never have been parties to the proceeding before the Department and should not now be served with notice of Thompson Creek's petition for judicial review.

B. Due Process will not be Violated if Water Users in Basins 73, 74, and 75 are not Served with Notice of Thompson Creek's Petition for Judicial Review

In its Memorandum, Thompson Creek correctly asserts that the Department, on previous occasions, has stated its intention of expanding Water District No. 170 to include basins 73, 74, and 75. *Memorandum* at 3-4. Furthermore, Thompson Creek correctly states that "the creation of a water district has a sufficiently burdensome affect on real property rights to require constitutional Due Process protections. And, when Due Process applies, it generally requires notice and an opportunity to present one's case." *Memorandum* at 5.

It is incorrect to assume, however, that due process will be denied to water users in basins 73, 74, and 75 if Thompson Creek does not serve them with notice of this proceeding. Once the Department makes its determination to expand the boundaries of Water District 170 to include

² Upon motion by a party in a general stream adjudication, the district court having jurisdiction may enter an order permitting the interim administration of water rights in accordance with director's reports filed with, or partial decrees issued by, the court. Idaho Code § 42-1417. On May 16, 2005, the State of Idaho, a party to the SRBA, filed a motion with the SRBA District Court for interim administration of water rights in basins 71 and 72. On September 29, 2005, the SRBA District Court entered an order authorizing the interim administration of water rights by the Director in basins 71 and 72.

³ All of the rights in basins 73, 74, and 75 are projected to be recommended by the Director to the SRBA District Court by the end of 2006.

basins 73, 74, and 75, the due process protections contained in Idaho Code § 42-604 will apply. Therefore, contrary to Thompson Creek's assertion, due process will not be violated if this Court does not grant its motion to serve water users in basins 73, 74, and 75 with notice of its petition for judicial review.

C. The Integrity of this Proceeding will not be Jeopardized if Water Users in Basins 73, 74, and 75 are not Given Legal Notice of Thompson Creek's Petition for Judicial Review

It is unclear why Thompson Creek believes that the integrity of this proceeding could be jeopardized if water users in basins 73, 74, and 75 are not served with notice of Thompson Creek's petition for judicial review. Water users in basins 73, 74, and 75 could not have been party to these proceedings because Idaho Code § 42-604 prevented the Director from creating a water district that encompassed those basins. Therefore, any complaints that water users in those basins might have as to these proceedings are not justiciable. Any complaints that users in those basins might have as to the creation of Water District No. 170 will be ripe once the Director announces his intention of expanding its boundaries.

D. What Harm Could Result if Thompson Creek's Motion is Granted?

In its Memorandum, Thompson Creek poses the question: "it is difficult to imagine what harm will come from providing water users within Basins 73, 74, and 75 with notice of the proceeding and the opportunity to be heard if they so desire." *Memorandum* at 5. Any number of harms could result, however, if Thompson Creek's Motion is granted. Since water users in basins 73, 74, and 75 were not served with notice of the Department's intention to create Water District No. 170, granting the Motion would lead to confusion among water users in those basins. By receiving notice at this time, water users in basins 73, 74, and 75 could be led to the conclusion that they were wrongly excluded as parties in the underlying action, or should have a

right to participate in Thompson Creek's petition for judicial review. However, until all water rights claimed in basins 73, 74, and 75 have been reported to, or partially decreed by, the SRBA District Court, water users in those basins cannot be party to, or participate in litigation concerning the creation of Water District No. 170 as it is currently established. Idaho Code § 42-604

Furthermore, Thompson Creek's petition for judicial review is an appellate proceeding. Accordingly, the matter is limited to the record created before the Department, and new facts and issues cannot be raised. If Thompson Creek's Motion is granted, and water users in basins 73, 74, and 75 decide to participate, it is likely that those users would raise facts and issues that were not before the Department, and cannot now be considered on judicial review.⁴ Even Thompson Creek acknowledges in its Memorandum that users in basins 73, 74, and 75 may raise different and unique issues:

Thompson Creek wants to avoid a situation in which water users from Basins 73, 74, and 75 may question the validity of this proceeding based upon a lack of notice. For example, some water users within those basins may support the creation of WD170, while others may oppose WD170 *based upon concerns that are altogether different than those of Thompson Creek*. The fact is that these water users may have other, more general arguments for or against the creation of WD170 that do not relate specifically to the need for water resource administration within Basins 71 and 72.

Memorandum at 5-6 (emphasis added).

Because water users in basins 73, 74, and 75 will likely raise facts and issues that are outside the record, the Court and parties would be required to spend time and effort parsing through statements never considered by the Department. For purposes of judicial economy, Thompson Creek's Motion should be denied.

⁴ Idaho Rule of Civil Procedure 84(f); Idaho Appellate Rule 28; *State ex rel. Ohman v. Ivan H. Talbot Family Trust*, 120 Idaho 825, 827, 820 P.2d 695, 697 (1991) ("We are bound by the record and cannot consider matters or materials not part of or contained therein.").

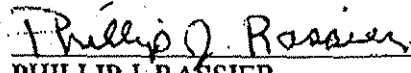
III.

CONCLUSION

Based on the foregoing, Thompson Creek's *Motion to Clarify Service List* should be denied.

DATED this 13th day of November, 2006.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
CHIEF: NATURAL RESOURCES DIVISION



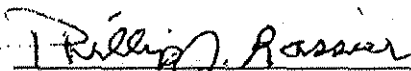
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Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 13th day of November, 2006.

Document Served: MEMORANDUM IN RESPONSE TO MOTION
TO CLARIFY SERVICE LIST

Persons Served: Scott L. Campbell
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2006 NOV 17 PM 2:31

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

REPLY TO MEMORANDUM IN RESPONSE
TO MOTION TO CLARIFY SERVICE LIST

COMES NOW Petitioner Thompson Creek Mining Company ("Thompson
Creek") by and through its undersigned attorneys and submits the following reply to Respondent

REPLY TO MEMORANDUM IN RESPONSE
TO MOTION TO CLARIFY SERVICE LIST - 1

BOI_MT2-833224.1

Idaho Department of Water Resources' (the "Department") *Memorandum in Response to Motion to Clarify Service List* (the "Response") pursuant to Idaho Rule of Civil Procedure 7(b)(3).

I. INTRODUCTION

Thompson Creek previously submitted and served its *Motion to Clarify Service List* and supporting memorandum (collectively, the "Motion"), asking this Court to clarify whether water users within Basins 73, 74, and 75 should be provided with an opportunity to participate in this judicial proceeding challenging the Department's creation of Water District 170 ("WD170"). The Department submitted its Response to this Motion on November 13, 2006. Thompson Creek stands by its arguments set forth in its original Motion and feels that it is unnecessary to repeat them here. However, some of the arguments advanced in the Department's Response warrant some additional discussion, as set forth below.

II. ARGUMENT

A. The Procedural Rules Cited In The Department's Response Do Not Preclude The Participation Of Water Users In Basins 73, 74, And 75

In Section II.A of the Response, the Department argues that notice and an opportunity to participate should not be provided to water users within Basins 73, 74, and 75 because they were not "parties" to the administrative proceeding before the Department. Response at 2-4. Thompson Creek has several objections to this argument.

First, the Idaho court rules and statutory provisions relied upon by the Department merely establish minimum requirements for service and judicial review; they do not preclude the inclusion of other parties that may have an interest in the proceeding. For example, the Department notes that Idaho Rule of Civil Procedure 84(b)(1) requires a party challenging an agency action to "serve copies of the notice of petition for judicial review upon . . . all other

parties to the proceeding before the agency.” However, this is a minimum standard for notifying other parties of a judicial challenge; it in no way precludes the participation of *other* parties potentially interested in the proceeding.

Similarly, as the Department explains, Idaho Code Section 67-5270(3) provides that “[a] party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review. . . .” And, “party” is defined somewhat circularly as “each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.” IDAHO CODE § 67-5201(13). Again, these provisions simply provide a minimum standard, in that they provide parties aggrieved by an agency action with a right of judicial review. They in no way limit or preclude the participation of other potentially interested parties in such a proceeding.

The Department’s discussion of Idaho Code Section 42-604—the operative water district statute—contains similar defects. See Response at 3. That statute requires the Department to “send notice of the proposed action to each water user in the district or proposed district.” It does not preclude the participation of other potentially interested parties in an appeal of that action. Thompson Creek is not challenging the notice previously provided by the Department, so Section 42-604 is of limited applicability here (although it is notable that the Department assumes that the phrase “proposed district” should not include Basins 73, 74, and 75).

The Department states that “[w]ater users in basins 73, 74, and 75 . . . could never have been parties to the proceeding” creating WD170. Response at 4. However, this is not entirely accurate. As has been explained, there is no law or rule *precluding* the inclusion of those water users. Rather, it was the Department that decided not to include those parties in the

original proceeding, despite its consistent position that WD170 would be expanded to include Basins 73, 74, and 75. This previous decision by the Department should not now be used as a justification to exclude water users in those basins from participating in the appeal of the creation of WD170.

B. The Department's Blurring Of The Lines Between WD170 Creation And WD170 Expansion Justify The Inclusion Of Water Users From Basins 73, 74, And 75

Given the limited applicability of the legal provisions on which the Department relies, Thompson Creek believes that certain factual aspects of the Department's creation of WD170 dictate that water users within Basins 73, 74, and 75 be given the opportunity to participate in this proceeding if they so desire. As the Department has conceded, it has consistently expressed its intention to expand WD170 to include Basins 73, 74, and 75.

Response at 4. In addition, the Department actively recruited members of those basins to participate in the steering committee that oversaw the creation of WD170, and several members of those basins did in fact serve on the committee. And, as Thompson Creek explained in its original Motion, water users from Basin 74 participated in the hearing on the creation of WD170.

In short, despite its attempts now to keep the *creation* of WD170 separate from the proposed *expansion* of WD170, the fact remains that the Department itself opened the door to this issue by consistently blurring the lines between these two potentially distinct administrative actions. As Thompson Creek concedes in its original Motion, water users not located within a proposed water district generally would not have standing to challenge water district creation. However, the Department's actions have essentially created a situation in which the creation of WD170 is the first step in a sequence of events that will ultimately culminate in the expansion of

WD170 to encompass Basins 73, 74, and 75. For this reason, water users from those Basins should have the opportunity to participate in the challenge to this "first step."

C. The Department's Assertions That Due Process Will Be Provided In The Future Does Not Preclude Providing Due Process Now

In Section II.B of the Response, the Department argues that water users from Basins 73, 74, and 75 should not be allowed to participate in this proceeding because Due Process will be afforded to them when WD170 is expanded to include those basins in the future. Response at 4-5. However, a promise to provide Due Process in the future as to the *expansion* of WD170 should not be determinative as to whether Due Process should be provided now as to the *formation* of WD170.

Again, the Department has essentially created a situation in which the formation of WD170 that is currently being challenged by Thompson Creek is the first step in a sequence of events that is intended to culminate in the expansion of WD170 to include Basins 73, 74, and 75. Accordingly, water users within those basins should have the opportunity to participate at both phases, as they have already done through their service on the WD170 Steering Committee and their testimony at the hearing on the formation of WD170.

D. Thompson Creek Is Not Proposing That New Rights Be Created Or New Issues Raised

Much of the Department's resistance to allowing water users in Basins 73, 74, and 75 to participate in this proceeding appears to be based on the fact that doing so does not neatly fit within the framework laid out by the water district statutes discussed in its Response. See Response at 2-4. However, blurring the lines between water district creation and water district expansion as the Department has done is not called for in the water district statutes, either.

The Department seems to imply in its Response that allowing the water users from Basins 73, 74, and 75 to participate would essentially provide them with some radical new right that is not called for in the applicable statutes and court rules. In this regard, it is important to note that what Thompson Creek is proposing—allowing potentially interested water users to participate in this proceeding—is not radical at all. As the Department correctly notes, Thompson Creek's challenge to the creation of WD170 is essentially an appellate proceeding. Response at 6. Idaho Appellate Rule 7.1 specifically provides a procedure through which a petitioning party "whose interest would be affected by the outcome of an appeal or proceeding" may intervene in that proceeding. *See also* I.R.C.P. 24. Accordingly, providing the Basin 73, 74, and 75 water users with notice of the proceeding would essentially notify them that they have the right to intervene pursuant to the Idaho Appellate Rules. And, Thompson Creek has no doubt that this distinction can be adequately explained so as to clear up any potential "confusion" among those water users about which the Department is so concerned. *See* Response at 5.

In its Response, the Department argues that allowing the Basin 73, 74, and 75 water users to participate would necessarily result in the introduction of new issues that were not part of the administrative record. Response at 6. In addition, the Department argues that Thompson Creek acknowledged this possibility in its original Motion. *Id.* However, this is not Thompson Creek's position. Thompson Creek agrees that this proceeding—regardless of whether it involves water users from Basins 73, 74, and 75—must be limited to the administrative record pursuant to the Idaho Administrative Procedure Act. *See* IDAHO CODE tit. 67, ch. 52. The point that Thompson Creek intended to convey in its original Motion is that water users from Basins 73, 74, and 75 may have different opinions or perspectives on issues that are contained within the administrative record.

Perhaps a few examples will help to illustrate this point. Clearly, a water user from Basin 73, 74, or 75 could not advance arguments in this particular proceeding that relate to whether the formation of a water district in one of those basins meets the statutory requirement of being "required in order to properly administer uses of the water resource" contained in Idaho Code Section 42-604. With respect to Basins 73, 74, and 75, such an argument would patently address a matter not addressed in the administrative record and would accordingly be barred. However, whether the Department recognized all of the necessary formalities in creating WD170 is a matter that *is* contained within the administrative record that could be raised by a water user from Basin 73, 74, or 75. Thompson Creek's point was that water users from those basins may have different *perspectives* on that particular issue—or any other issued contained in the record—that would not necessarily be considered or advanced by Thompson Creek. Thompson Creek does not maintain that those water users could raise issues not addressed within the administrative record.

III. CONCLUSION

There are no applicable statutes or rules that preclude the participation of water users within Basins 73, 74, and 75. Rather, the provisions discussed in the Department's Response simply provide minimum standards for Due Process. Allowing water users within Basins 73, 74, and 75 to participate in this proceeding would essentially allow them to intervene, which is clearly provided for by Idaho court rules. And, the Department opened the door to this issue by consistently expressing its intention to expand WD170 to include Basins 73, 74, and 75, and by soliciting the participation of water users from those basins. For these reasons and those discussed in Thompson Creek's original Motion, Thompson Creek's Motion should be granted.

DATED this 16th day of November, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell - Of the Firm
Attorneys for Thompson Creek Mining
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2006, I caused a true and correct copy of the foregoing **REPLY TO MEMORANDUM IN RESPONSE TO MOTION TO CLARIFY SERVICE LIST** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
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322 E. Front Street, 6th Floor
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Fax: 208-287-6700

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(X) Facsimile

Scott L. Campbell
Scott L. Campbell

**REPLY TO MEMORANDUM IN RESPONSE
TO MOTION TO CLARIFY SERVICE LIST - 8**

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DISTRICT COURT
CUSTER COUNTY
IDAHO

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Attorneys for Thompson Creek Mining Company

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

JOINT STIPULATION FOR ORDER
CLARIFYING SERVICE LIST

Petitioner, Thompson Creek Mining Company ("Thompson Creek"), and
Respondent, Idaho Department of Water Resources (the "Department"), by and through their

respective undersigned attorneys, hereby stipulate for the Court to decide and issue an order ^{ON} the
Motion to Clarify Service List without oral argument from the parties.

DATED this 20th day of November, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell - Of the Firm
Attorneys for Thompson Creek Mining
Company

DATED this 20th day of November, 2006.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
CHIEF, NATURAL RESOURCES
DIVISION

By: Phillip J. Rassier
PHILLIP J. RASSIER
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2006, I caused a true and correct copy of the foregoing **JOINT STIPULATION FOR ORDER CLARIFYING SERVICE LIST** to be served by the method indicated below, and addressed to the following:

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☐ Overnight Mail
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Phillip J. Rassier
Phillip J. Rassier

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

December 14, 2006 AT
11:30 a.m.

James C. Herndon
JAMES C. HERNDON
District Judge

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER**

IN THE MATTER OF CREATING THE)
UPPER SALMON RIVER BASIN WATER)
DISTRICT (DESIGNATED AS WATER)
DISTRICT NO. 170))

Case No. CV 2006-66

THOMPSON CREEK MINING)
COMPANY,)

Petitioner,)

**ORDER DENYING PETITIONER'S
MOTION TO CLARIFY SERVICE
LIST**

vs.)

IDAHO DEPARTMENT OF WATER)
RESOURCES,)

Respondent.)

BEFORE THIS COURT is the Motion of Petitioner Thompson Creek Mining Company (hereinafter "Thompson Creek") to Clarify Service List.¹ This case, which is an appeal of an administrative order, involves the creation of Water District No. 170 by Respondent, the Idaho

¹ Motion to Clarify Service List, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed November 1, 2006) (hereinafter "Thompson Creek's Motion").

ORDER DENYING PETITIONER'S MOTION TO CLARIFY SERVICE LIST

1

ORIGINAL

Department of Water Resources (the "IDWR").² Water users within IDWR's Administrative Basins 71 and 72 are affected by the creation of Water District No. 170, and therefore shall receive notice of this administrative appeal and an opportunity to opt into the proceeding.³ In its Motion, Thompson Creek argues that water users within IDWR's Administrative Basins 73, 74 and 75 should also receive notice of this administrative appeal because IDWR "has consistently stated that it intends to expand Water District No. 170 to include Basins 73, 74 and 75."⁴

IDWR objects to Thompson Creek's Motion to Clarify on the grounds that the water rights of water users within Administrative Basins 73, 74 and 75 have not been implicated at this time by the creation of Water District No. 170 and expanding the service list to include those water users causes potential confusion among the water users and the record.⁵

Having reviewed Thompson Creek's Motion, IDWR's Response, and Thompson Creek's Reply,⁶ this Court is of the opinion that expansion of the service list to include water users in Administrative Basins 73, 74 and 75, based on a future probability of action by IDWR, is premature. Whereas water users in Administrative Basins 73-75 may be affected by IDWR's actions in the future, their right to notice and an appearance is properly left for that future action, rather than the proceeding at bar.

² See: Thompson Creek Mining Company's Petition for Judicial Review of Idaho Department of Water Resources' Amended Final Order Creating Water District No. 170, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed May 5, 2006).

³ Thompson Creek's Motion, at p. 2; Order Requiring Notice of Intent to Participate in Appeal, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed in Chambers at Blackfoot, Idaho on September 26, 2006).

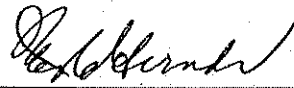
⁴ Thompson Creek's Motion, at p. 2.

⁵ Memorandum in Response to Motion to Clarify Service List, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed November 13, 2006).

For these reasons, this Court shall **deny** Thompson Creek's Motion to Clarify.

IT IS SO ORDERED.

DATED this 14th day of December, 2006.



James C. Herndon
District Judge

⁶ Reply to Memorandum in Response to Motion to Clarify Service List, *In re Creating the Upper Salmon River Basin Water District*, Custer County case no. CV 2006-66 (filed November 17, 2006).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on 12-14-06, I served a true copy of the foregoing Order Denying Petitioner's Motion to Clarify on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Scott L. Campbell, Esq.
Dylan B. Lawrence, Esq.
MOFFATT, THOMAS,
BARRETT, ROCK & FIELDS,
CHARTERED
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701



U.S. Mail



Courthouse Box



Facsimile

Lawrence Wasden, Esq.
Attorney General
Clive J. Strong, Esq.
Deputy Attorney General
Chief, Natural Resources Division
Phillip J. Rassier, Esq.
Garrick L. Baxter, Esq.
Chris M. Bromley, Esq.
Deputy Attorneys General
Idaho Department of Water
Resources
P.O. Box 83720
Boise, ID 83720-0098



U.S. Mail



Courthouse Box



Facsimile

ETHEL PECK, District Court Clerk

By: *K. Jones*

Jar Deputy Clerk

2007 FEB -2 AM 9:13

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
18976.7

Attorneys for Thompson Creek Mining Company

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

**NOTICE OF PETITION FOR JUDICIAL
REVIEW OF THE CREATION OF WATER
DISTRICT NO. 170**

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

NOTICE

On April 6, 2006 the Idaho Department of Water Resources (the "Department") issued its Amended Final Order Creating Water District No. 170 (also known as the Upper Salmon Water District). The purpose of this new water district is to administer water rights within the Department's Administrative Basins 71 and 72.

On May 5, 2006, Thompson Creek Mining Company ("Thompson Creek"), an owner of water rights within the affected area, filed a Petition for Judicial Review with the Custer County District Court challenging the Department's decision to create the new Water District No. 170. A copy of the Petition is included with this Notice as Attachment 1.¹

You are receiving this Notice because Thompson Creek is required by the Court to notify all water right holders within the affected area of its Petition, and Department records reflect that you own water rights within this affected area. A copy of the Court's Order is included with this Notice as Attachment 2.

If you would like to participate as a party to this proceeding, please complete the *Notice of Intent to Participate in Appeal* that is included with this Notice as Attachment 3 and mail it to the following address within forty-two (42) days of the date of this Notice:

Custer County Clerk
District Court
Seventh Judicial District
Post Office Box 385
Challis, Idaho 83226

¹ The Exhibits to the Thompson Creek *Petition for Judicial Review* are voluminous and are, therefore, not attached. If you wish to obtain copies of the Exhibits, please contact Debby Long by mail at Moffatt Thomas, Post Office Box 829, Boise, ID, 83701-0829; by phone at 208-385-5323; or by email at dll@moffatt.com.

In addition, if you decide to participate, please also send a copy of your completed

Notice of Intent to Participate in Appeal to the following addresses within the same time frame:

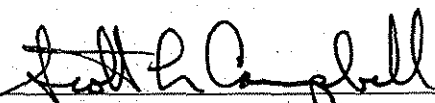
Thompson Creek Mining Company
c/o Scott Campbell
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
Post Office Box 829
Boise, Idaho 83701-0829

Phillip J. Rassier
Deputy Attorney General
Idaho Department of Water Resources
Post Office Box 83720
Boise, ID 83720-0098

Please note that, should you decide not to participate in this proceeding, such decision will not affect your water rights or your ability to enforce those rights. The scope of this proceeding is limited to determining whether the creation of Water District No. 170 was proper. Accordingly, it is not necessary for you to participate in this proceeding in order to preserve or protect your water rights.

DATED this 24th day of January, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm
Attorneys for Thompson Creek Mining
Company

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 30th day of January, 2007, I caused a true and correct copy of the foregoing NOTICE OF PETITION FOR JUDICIAL REVIEW OF THE CREATION OF WATER DISTRICT NO. 170 to be served by the method indicated below, and addressed to the following:

Phillip J. Rassier
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
Post Office Box 83720
Boise, Idaho 83720-0098
Fax: 208-287-6700

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mailing List for Administrative Basins 71
and 72 provided by Idaho Department of Water
Resources on January 12, 2007

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Scott L. Campbell

ATTACHMENT 1

DISTRICT COURT
CUSTER COUNTY
IDAHO

2006 MAY -5 PM 12:56

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
18976.7

**This case has been
assigned to:**

**Honorable James C. Herndon
District Judge**

Attorneys for Thompson Creek Mining Company

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN RE: IDAHO DEPARTMENT OF WATER
RESOURCES AMENDED FINAL ORDER
CREATING WATER DISTRICT NO. 170

W-2006-166
THOMPSON CREEK MINING COMPANY'S
PETITION FOR JUDICIAL REVIEW OF
IDAHO DEPARTMENT OF WATER
RESOURCES' AMENDED FINAL ORDER
CREATING WATER DISTRICT NO. 170

I. INTRODUCTION

Thompson Creek Mining Company ("Thompson Creek"), through Scott L. Campbell, its counsel of record, hereby submits this Petition for Judicial Review of the Amended Final Order Creating Water District No. 170, issued by the Director of the Idaho Department of Water Resources (the "Department") on April 6, 2006. This Petition for Judicial Review ("Petition") is brought pursuant to Idaho Code Sections 67-5270 through 67-5279 and Rule 84 of

the Idaho Rules of Civil Procedure. A copy of the Director's April 6, 2006 Amended Final Order Creating Water District No. 170 is attached hereto as Exhibit A.

Thompson Creek previously submitted to the Department a Petition for Reconsideration of the Final Order Creating Water District No. 170, as well as additional written comments explaining why creating the new district is improper. By issuing its Amended Order, the Director rejected these submissions. Accordingly, Thompson Creek has exhausted its administrative remedies.

II. HEARING

The Department conducted a hearing on this matter on November 9, 2005, in Challis, Idaho. The hearing was recorded via electronic sound recording. On November 16, 2005, Patsy McGourty transcribed and certified the transcript of the hearing. The electronic sound recording is currently in the possession of the Idaho Department of Water Resources State Office, 322 East Front Street, 6th Floor, Boise, Idaho, 83702.

III. ISSUES FOR JUDICIAL REVIEW

The primary issue to be decided on judicial review is whether the Director has a sufficient basis to determine that the creation of the new Water District No. 170 is "required" pursuant to Idaho Code Section 42-604. Thompson Creek alleges there is not a sufficient basis in the record for this determination. Additionally, Thompson Creek alleges the Director improperly used the August 20, 2004 Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees (attached hereto as Exhibit B) and the November 17, 2004 Amended Order Approving Stipulation and Entry of Partial Decrees (attached hereto as Exhibit C), as the primary basis for his decision to create Water District No. 170. By doing so,

the Director violated the terms of the Snake River Basin Adjudication District Court's Orders approving and implementing the Stipulation. Also, the Director's decision improperly modifies and substantially violates the Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections, dated May 29, 1998, between the United States and Thompson Creek (attached hereto as Exhibit D) and the implementing Order of the Snake River Basin Adjudication District Court Approving Stipulation and Dismissing Objections, dated June 16, 1998 (attached hereto as Exhibit E). The Director's creation of the new water district is accordingly in violation of statutory provisions, in excess of the Department's statutory authority, made upon unlawful procedure, not supported by substantial evidence on the record as a whole, and arbitrary, capricious, and an abuse of discretion.

Pursuant to Rule 84(d) of the Idaho Rules of Civil Procedure, this is a non-binding, preliminary identification of the issues to be decided on judicial review, and Thompson Creek may raise additional issues as necessary.

IV. TRANSCRIPT REQUEST

Thompson Creek hereby requests a copy of the Department's agency record and transcript and certifies that it has paid to the Department the estimated fee for preparation of same. The Department's estimate for preparation is \$42.25.

DATED this 1st day of May, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Thompson Creek Mining
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2006, I caused a true and correct copy of the foregoing THOMPSON CREEK MINING COMPANY'S PETITION FOR JUDICIAL REVIEW OF IDAHO DEPARTMENT OF WATER RESOURCES' AMENDED FINAL ORDER CREATING WATER DISTRICT NO. 170 to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Karen Porter
598 Sunrise Blvd. N.
Twin Falls, ID 83301

☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Robert J. Porter II
598 Sunrise Blvd. N.
Twin Falls, ID 83301

☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Mark Anderson
871 Morningside Drive
Twin Falls, ID 83301

☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

US Department of Agriculture
Forest Service
Sawtooth National Forest
2647 Kimberly Road E.

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Neal H. Morrison
P.O. Box 165
Twin Falls, ID 83303

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Rick C. Parks
P.O. Box 801
Twin Falls, ID 83303-081

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mary Lynne Harris
35955 Hwy 79
Wanner Springs, CA 92086

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

James Lee Behrens
35955 Hwy 79
Wanner Springs, CA 92086

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

The Daniel J. Mahoney Jr. Lifetime Trust II
c/o John D. Ward, Esq.
1200 New Hampshire Avenue NW, Suite 800
Washington DC 20036-6802

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

W. Michael Humphreys
72 Abbott Road
Wellesley, MA 02481-6104

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Yankee Fork Gold Dredge Association
P.O. Box 459
Wendell, ID 83355

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

James R. Peters
Carrier Route R004
West Chester, PA 19382

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Bert L. Shesney
16 Rondel Drive
Wewoka, OK 74884

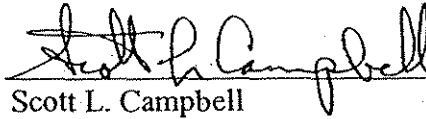
☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

John Simpson
309 Manuella
Woodside, CA 94062

☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile

Lynn Simpson
309 Manuella
Woodside, CA 94062

☒ (X) U.S. Mail, Postage Prepaid
☐ () Hand Delivered
☐ () Overnight Mail
☐ () Facsimile



Scott L. Campbell

ATTACHMENT 2

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

September 26, 2006 AT

James C. Herndon
JAMES C. HERNDON
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

RECEIVED
OCT 02 2006
MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD.

IN RE: IDAHO DEPARTMENT OF WATER
RESOURCES AMENDED FINAL ORDER
CREATING WATER DISTRICT NO. 170

Case No. CV 06-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES,
an agency of the State of Idaho,

Respondent.

ORDER REQUIRING NOTICE
OF INTENT TO PARTICIPATE
IN APPEAL

Petitioner, Thompson Creek Mining Company ("Thompson Creek"), and Respondent, Idaho Department of Water Resources ("IDWR"), having moved this Court for entry of an order requiring that any holders of water rights subject to administration within Department of Water Resources Water District No. 170 who desire to participate in this appeal must file with the Court a notice of appearance indicating an intent to participate in this proceeding for judicial review, and good cause having been shown therefor,

ORDER REQUIRING NOTICE OF
INTENT TO PARTICIPATE IN APPEAL, Page 1

FILE

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that holders of water rights subject to administration within Department of Water Resources Water District No. 170 who desire to participate in this appeal must file a notice of intent to participate in this case within forty-two (42) days of the Petitioner Thompson Creek serving upon them a copy of its *Notice of Petition for Judicial Review of the Creation of Water District No. 170* and a copy of this *Order Requiring Notice of Intent to Participate in Appeal*. Any person filing a notice of intent to participate in this case with the Court in accordance with this order is required to serve a copy of the notice upon counsel for Thompson Creek Mining Company and counsel for the Idaho Department of Water Resources.

DATED this 26th day of September, 2006.



James C. Herndon
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 27th day of September, 2006.

Document Served: ORDER REQUIRING NOTICE OF INTENT TO PARTICIPATE IN APPEAL

SCOTT CAMPBELL
DYLAN B. LAWRENCE
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
P.O. Box 829
Boise, Idaho 83701-0829

PHILLIP J. RASSIER
SUSAN E. HAMLIN NYGARD
CHRIS M. BROMLEY
Deputy Attorneys General
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

CLERK OF THE DISTRICT COURT
Ethel M Beck

By Luna Baker, Deputy

ATTACHMENT 3

Notice of Intent to Participate in Appeal

Complete and mail the following 3 pages only if you desire
to participate in the appeal of this matter.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

**NOTICE OF INTENT TO PARTICIPATE IN
APPEAL**

I, _____ hereby certify:

(i) that I (or the person or entity on whose behalf I am acting as an attorney or
duly appointed personal representative) currently own the following water right(s) within the
Idaho Department of Water Resources (the "Department") Administrative Basins 71 and 72:

(please list water right number(s)) _____

(ii) that I (or the person or entity on whose behalf I am acting as an attorney or duly appointed personal representative) have received a copy of the Notice informing me that Thompson Creek Mining Company has filed a Petition for Judicial Review challenging the Department's formation of the new Water District No. 170; and

(iii) that I (or the person or entity on whose behalf I am acting as an attorney or duly appointed personal representative) wish to participate as a party to this proceeding.

Dated this _____ day of _____, 2006.

Signature

Please print:

Name _____

Name of owner of water rights (if different than above) _____

Mailing address _____

Telephone _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 2007, I caused a true and correct copy of the foregoing **NOTICE OF INTENT TO PARTICIPATE** to be served by the method indicated below, and addressed to the following:

Custer County Clerk
District Court
Seventh Judicial District
Post Office Box 385
Challis, Idaho 83226
Fax: 208-879-6412

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Phillip J. Rassier
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
Post Office Box 83720
Boise, Idaho 83720-0098
Fax: 208-287-6700

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Scott L. Campbell
Dylan B. Lawrence
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701-0829
Fax: 208-385-5384

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Signature

Fact Sheet

Judicial Review of Upper Salmon Water District

What is this all about?

On March 6, 2006, and April 7, 2006, the Idaho Department of Water Resources (IDWR) issued orders creating the Upper Salmon Water District, also known as Water District No. 170. The general purpose of this new water district is to administer water rights in IDWR's Administrative Basins 71 and 72. Thompson Creek Mining Company has filed a lawsuit challenging IDWR's creation of this new water district.

Why did I receive these materials?

If you received these materials, it is because IDWR records reflect that you own water rights in the area affected by the new water district. This gives you the legal right to participate in the lawsuit challenging the new water district.

Where and when will this lawsuit take place?

Because this is a lawsuit, it will be decided by a court. This case will be heard by the district court for Custer County, located in Challis. The Honorable James C. Herndon is the presiding judge. Generally speaking, this lawsuit will consist of the following steps:

- First, it is necessary to identify the parties to this proceeding. Right now, Thompson Creek Mining Company and IDWR are the only active parties. However, any affected water right owner that completes and timely submits a *Notice of Intent to Participate* will also become an active party to the proceeding.
- Once the parties have been identified, IDWR will submit its administrative record to the court. Basically, the administrative record consists of the information on which IDWR based its decision to create the new water district.
- After IDWR submits its administrative record, the parties will submit briefs to the court explaining why the decision to create the new water district should either be upheld or overturned.
- Once the court has reviewed the briefs, there will be a hearing at which the parties will have the opportunity to explain their positions to the court.
- After the hearing, the court will render its decision. It is possible that some parties to the proceeding may wish to appeal the court's decision to the Idaho Supreme Court.

Because this lawsuit is in its very early stages, it is difficult to predict the timing of these various steps. Right now, the most important date is the deadline for submitting the *Notice of Intent to Participate*, if you want to be a party to this proceeding.

Do I need to participate in order to keep or protect my water rights?

No. The goal of this proceeding is to simply determine whether the creation of the new water district was legally proper. While the creation of the new water district may result in increased

costs to affected water right owners, neither the water district nor this proceeding will affect the terms or validity of your water rights.

Why would I want to participate in this proceeding?

You may want to participate in this proceeding if you want your voice to be heard regarding whether the creation of the new water district was legally proper.

How do I participate?

In order to participate as a party to this proceeding, you must complete and submit the enclosed *Notice of Intent to Participate* form within 42 days of the date that these materials were *postmarked* to you. If you want to become a party to this proceeding, please carefully follow the instructions provided in the *Notice of Petition for Judicial Review*.

What would participation in this proceeding involve?

Ultimately, as a party to this proceeding, you would be asked to submit a legal brief to the court and participate in a hearing explaining why you believe the creation of the new water district was or was not legally proper. In addition, it is possible that participation would also require intermediate steps, such as submitting or responding to motions to the court and participating in motion hearings and status conferences.

Do I have to hire an attorney to participate?

Any person is entitled to represent themselves in court. However, because this is a court proceeding, to participate in a meaningful way would require an understanding of Idaho statutes, judicial case law, and court rules. In addition, participating would likely entail several "legal" tasks, such as the preparation of motions and briefs to the court. Accordingly, anyone that wishes to participate should strongly consider consulting an attorney.

2007 MAR 12 AM 9:47

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

NOTICE OF INTENT TO PARTICIPATE IN
APPEAL

I, Cooper & Larsen, Chartered, hereby certify:

(i) that I (or the person or entity on whose behalf I am acting as an attorney or
duly appointed personal representative) currently own the following water right(s) within the
Idaho Department of Water Resources (the "Department") Administrative Basins 71 and 72:

(please list water right number(s)) 72-00230R

(ii) that I (or the person or entity on whose behalf I am acting as an attorney or duly appointed personal representative) have received a copy of the Notice informing me that Thompson Creek Mining Company has filed a Petition for Judicial Review challenging the Department's formation of the new Water District No. 170; and

(iii) that I (or the person or entity on whose behalf I am acting as an attorney or duly appointed personal representative) wish to participate as a party to this proceeding.

Dated this 12 day of March, ~~2006~~ 2007.


Signature

Please print:

Name Reed W. Larsen

Name of owner of water rights (if different than above) Lillian B. Morgan and the K.F.
and Lillian B Morgan Revocable Trust

Mailing address P.O. Box 4229, Pocatello, ID 83205-4229

Telephone (208) 235-1145

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2007, I caused a true and correct copy of the foregoing NOTICE OF INTENT TO PARTICIPATE to be served by the method indicated below, and addressed to the following:

Custer County Clerk
District Court
Seventh Judicial District
Post Office Box 385
Challis, Idaho 83226
Fax: 208-879-6412

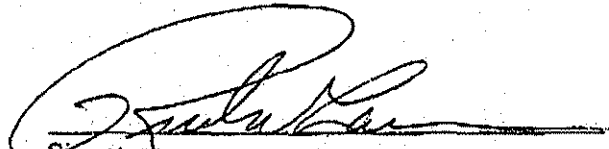
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Phillip J. Rassier
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
Post Office Box 83720
Boise, Idaho 83720-0098
Fax: 208-287-6700

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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Signature

LAWRENCE G. WASDEN
ATTORNEY GENERAL

2007 MAR 27 AM 8:09

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PHILLIP J. RASSIER (ISB #1750)
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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN RE: IDAHO DEPARTMENT OF WATER
RESOURCES AMENDED FINAL ORDER
CREATING WATER DISTRICT NO. 170

Case No. CV 06-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT WATER RESOURCES,
An agency of the State of Idaho,

Respondent.

**NOTICE OF
LODGING OF
TRANSCRIPT AND
RECORD**

TO: THE DISTRICT COURT AND ALL PARTIES OR THEIR COUNSEL OF
RECORD

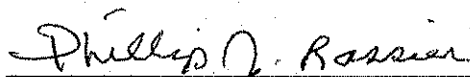
YOU ARE HEREBY NOTIFIED, pursuant to I.R.C.P. 84(j), that the agency's record and transcript having been prepared pursuant to IRCP 84(f) and (g), the record and the transcript are lodged with the agency for the purpose of settlement in accordance with IRCP 8(j).

The parties may pick up a copy of the transcript and record at the agency at 322 E. Front Street, Boise, Idaho. The Petitioner shall pay any balance of the fee for preparation of the transcript prior to receiving a copy of the transcript.

The parties have fourteen (14) days from the date of this notice in which to file any objections to the transcript and record. Upon failure of the parties to file any objection within that time period, the record shall be deemed settled.

Any objections to the transcript and record shall be determined by the agency within fourteen (14) days of receipt thereof. The agency's decision on the objection and all evidence, exhibits, and written presentations on the objection shall be included in the record on petition for judicial review.

DATED this 21st day of March 2007.



PHILLIP J. RASSIER
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

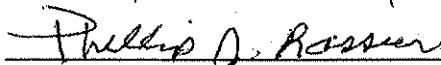
I hereby certify that I am a duly licensed attorney in the State of Idaho, employed by the Attorney General of the State of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 21st day of March 2007.

Documents served: NOTICE OF LODGING OF TRANSCRIPT AND RECORD

Persons served:

Scott L. Campbell
Dylan B. Lawrence
Moffatt, Thomas, Barrett, Rock &
Fields, Chartered
101 S. Capitol Blvd. 10th Floor
Post Office Box 829
Boise, Idaho 83701

Reed W. Larsen
Copper & Larsen
151 North 3rd Ave. 2nd Floor
P.O. Box 4229
Pocatello, Idaho 83205-1145



PHILLIP J. KASSIER

Deputy Attorney General
Idaho Department of Water Resources

SEVENTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF CUSTER

MAIN STREET, PO BOX 385 CHALLIS, IDAHO 83226
2007 MAR 22 PM 3:55

THOMPSON CREEK MINING COMPANY

VS.

IDWR

Case No: CV-2006-0000066

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the above-entitled case is set for:

Status Conference Wednesday, May 23, 2007 01:00 PM
Judge: Brent J. Moss
Courtroom: Custer County Courtroom

I certify that copies of this Notice were served as follows on March 22nd, 2007.

Plaintiff's Counsel:

Scott L. Campbell, Esq
P O Box 829
Boise ID 83701

Mailed_XX_ Hand Delivered_____ Faxed_____

Defendant's Counsel:

Phillip J. Rassier Esq
P O Box 83720
Boise ID 83720-0098

Mailed_XX_ Hand Delivered_____ Faxed_____

Dated: Thursday, March 22, 2007
Barbara C. Breedlove
Clerk Of The District Court

By: Ruth Brunk
Deputy Clerk

DISTRICT COURT
CUSTER COUNTY
IDAHO
B. Bredt
2007 APR -4 PM 1:52

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
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18976.7

Attorneys for Thompson Creek Mining Company

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondent.

**OBJECTION TO ADMINISTRATIVE
RECORD LODGED BY THE
DEPARTMENT OF WATER
RESOURCES**

On March 21, 2007, the Department of Water Resources served upon Thompson
Creek Mining Company its *Notice of Lodging of Transcript and Record* in the above-referenced

**OBJECTION TO ADMINISTRATIVE RECORD LODGED BY
THE DEPARTMENT OF WATER RESOURCES - 1**

matter. Pursuant to Idaho Rule of Civil Procedure 84(j), Thompson Creek hereby objects to the administrative record lodged by the Department because it omits several documents that are either directly relevant to, or that provide critical background and context regarding, the creation of Water District 170 ("WD170").

I. DISCUSSION

A. The Administrative Record Should Include Documents Related to the Federal Government's Wild & Scenic Rivers Act Water Right Claims in the Snake River Basin Adjudication.

The administrative record in this case should include certain documents from the previous legal proceeding that addressed water right claims filed in the Snake River Basin Adjudication (the "SRBA") by the federal government based on the Wild & Scenic Rivers Act. The Department has stated on numerous occasions that WD170 was formed in order to implement the agreement between the federal government, the state of Idaho, and various other parties that purported to resolve the disputes over those claims. Accordingly, certain documents from that proceeding provide background and context that is critical to an understanding of the current dispute over the formation of WD170.

In the SRBA, the federal government filed several claims to instream flow water rights that it asserted were reserved to it by the federal Wild & Scenic Rivers Act. *See, e.g.*, Exhibits A and B. Several parties, including Thompson Creek, objected to these claims, and these claims and objections became the subject of consolidated subcase 75-13316 in the SRBA. *See, e.g.*, Exhibits C and D. On August 20, 2004, the federal government, the state of Idaho, and several of the objectors settled this dispute over the Wild & Scenic Rivers Act claims in a stipulation that became known as the Wild & Scenic Rivers Agreement. *See* Exhibit N. This Agreement was approved by the SRBA district court on November 18, 2004. *See* Exhibit R.

And, paragraph 2(b) of that Agreement states that the Department is required to create a new water district in Basins 71 and 72. Exhibit N at 3-4.

The administrative record lodged by the Department demonstrates that WD170 was created in order to implement the Wild & Scenic Rivers Agreement and its water district provision. *See, e.g., R. at 57, 59, 65.* Due to this direct relationship between the Wild & Scenic Rivers Agreement and the creation of WD170, documents related to the Agreement and the federal Wild & Scenic Rivers Act water right claims should be included in the administrative record. Without them and the background and context that they provide, a full understanding of the issues in the current proceeding will not be possible.

Importantly, Thompson Creek does not suggest that all documents from consolidated subcase 75-13316 should be included in the administrative record. Rather, Thompson Creek believes that the following documents, which are attached to this Objection as Exhibits, are sufficient to provide the necessary background and context:

1. *Notice of Claim to a Water Right Reserved Under Federal Law (Amended)*, by the United States of America (Water Right No. 75-13316) (undated) (Exhibit A).
2. *Notice of Claim to a Water Right Reserved Under Federal Law (Amended)*, by the United States of America (Water Right No. 77-11941) (undated) (Exhibit B).
3. *Objection*, by Thompson Creek Mining Company (Water Right No. 75-13316, Oct. 11, 1995) (Exhibit C).
4. *Objection*, by Thompson Creek Mining Company (Water Right No. 77-11941, Oct. 11, 1995) (Exhibit D).
5. *Motion to File Amended Notice of Claim*, by the United States of America (Subcase No. 75-13316, Feb. 26, 1997) (Exhibit E).
6. *United States' Motion for Partial Summary Judgment on Its Claims to Federal Reserved Water Rights for Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, Jan. 15, 1998) (Exhibit F).

7. *United States' Memorandum in Support of its Motion for Partial Summary Judgment on Its Claims to Federal Reserved Water Rights for Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, Jan. 15, 1998) (Exhibit G).
8. *Thompson Creek's Memorandum in Response to United States' Motion for Partial Summary Judgment on its Federal Reserved Water Rights Claims for Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, Feb. 27, 1998) (Exhibit H).
9. *The United States' Consolidated Reply Memorandum In Support of Its Motion for Partial Summary Judgment On Its Claims to Federal Reserved Water Rights For Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, April 1, 1998) (Exhibit I).
10. *Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections*, by the United States of America and Thompson Creek Mining Company (Consolidated Subcase Nos. 63-25239, 75-13316 and 75-13605, May 29, 1998) (Exhibit J).
11. *Order Approving Stipulation and Dismissing Objections* (Consolidated Subcase Nos. 63-25239, 75-13316 and 75-13605, June 16, 1998) (Exhibit K).
12. *Memorandum Decision Granting, In Part, and Denying, In Part, the United States' Motion for Summary Judgment on Reserved Water Rights Claims* (Consolidated Subcase No. 75-13316, July 27, 1998) (Exhibit L).
13. *Potlatch Corporation and Hecla Mining. v. United States of America* (Idaho Supreme Court, 2000 Opinion No. 106, Oct. 27, 2000), or *Potlatch Corporation v. United States*, 12 P.3d 1256 (Idaho 2000) (Exhibit M).
14. *Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees*, between the United States of America, the State of Idaho, et al. (Consolidated Subcase No. 75-13316, Aug. 20, 2004) (i.e., the Wild & Scenic Rivers Agreement) (Exhibit N).
15. *Thompson Creek Mining Company's Objection to Proposed Settlement Agreement* (Consolidated Subcase No. 75-13316, Oct. 14, 2004) (Exhibit O).
16. *Memorandum in Support of Thompson Creek Mining Company's Objection to Proposed Stipulation* (Consolidated Subcase No. 75-13316, Oct. 14, 2004) (Exhibit P).

17. *Order Approving Stipulation and Entry of Partial Decrees* (Consolidated Subcase No. 75-13316, Nov. 16, 2004) (Exhibit Q).
18. *Amended Order Approving Stipulation and Entry of Partial Decrees* (Consolidated Subcase No. 75-13316, Nov. 18, 2004) (Exhibit R).

B. The Administrative Record Should Include Additional Documents Related to the WD170 Steering Committee.

The record lodged by the Department already contains a number of documents related to the steering committee that was formed by the Department and local water users to provide input on the formation of WD170. However, it appears that the Department has omitted a number of other documents from the same general time period that are also relevant to the WD170 steering committee. Thompson Creek believes the following documents, which are included as Exhibits to this Objection, should be included in the administrative record:

19. *Letter from Tim Luke Re: Announcement of Meeting With Existing State Water Districts in the Upper Salmon River Basin to Discuss the Wild and Scenic Rivers Water Rights Agreement and Establishing a New Water District in the Upper Salmon River Basin* (Feb. 9, 2005) (Exhibit S): This letter was sent to watermasters, secretaries, and advisory committee members of already existing water districts within WD170. It contains detailed discussions of the background and purpose of WD170 and is therefore relevant to this proceeding.
20. *Letter from Tim Luke Re: Upper Salmon Water District Steering Committee* (June 17, 2005) (Exhibit T): This letter was sent to certain water users in Basins 71, 72, 73, 74, and 75 as an invitation to join the WD170 steering committee. It also contains helpful discussions of the background and purposes of the formation of WD170 and is therefore relevant to this proceeding.
21. *Wild & Scenic Water Rights Agreement: Upper Salmon River Basin* (Sept. 13, 2005) (Exhibit U): This is a printout of a PowerPoint slideshow that was presented at the September 13, 2005 WD170 advisory committee meeting and that was also apparently included as an enclosure to a letter of September 27, 2005 from Tim Luke to members of the committee. R. at 59, 68-88.

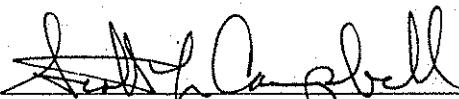
C. The Administrative Record Should Include These Other, Miscellaneous Documents.


For the reasons described below, Thompson Creek believes the following documents should also be included in the administrative record:

22. *Written Comments of Thompson Creek Mining Company* (Nov. 18, 2005) (without exhibits)¹ (Exhibit V hereto): This was submitted directly to the Director after the November 9, 2005, hearing on the creation of WD170, but also well before both the *Final Order Creating Water District No. 170* that was issued on March 8, 2006, and the *Amended Final Order Creating Water District No. 170* that was issued on April 7, 2006. As such, this submission constitutes "evidence received or considered" that Idaho Code Section 67-5249(2)(b) requires to be included in the administrative record.
23. As the *Notice of Information Meeting and Hearing* of October 7, 2005, indicates, the Department held a public information meeting in Challis on October 24, 2005, to discuss the creation of WD170 in anticipation of the November 9, 2005, hearing. To the extent that there are any minutes, transcripts, or other documents describing that meeting, such documents should be included in the administrative record.
24. The record reflects that Department representatives presented a slide show at the public information meeting of October 24, 2005. A hard copy of that slide show presentation should be included in the administrative record.

DATED this 3rd day of April, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm

By 
Dylan B. Lawrence – Of the Firm
Attorneys for Thompson Creek Mining
Company

¹ All exhibits to the *Written Comments* appear elsewhere in the Department's administrative record and are accordingly not included with this *Objection*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 2007, I caused a true and correct copy of the foregoing **OBJECTION TO ADMINISTRATIVE RECORD LODGED BY THE DEPARTMENT OF WATER RESOURCES** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
Idaho Water Center
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

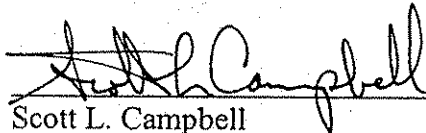
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☐ Facsimile

Phillip J. Rassier
Chris M. Bromley
Deputy Attorneys General
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☐ Overnight Mail
☐ Facsimile



Scott L. Campbell

Filed at 11:26 AM
April 20 2007
Clerk of the District Court
By Ruth Brunker

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN RE: IDAHO DEPARTMENT OF WATER)	
RESOURCES AMENDED FINAL ORDER	)	Case No. CV 2006-66
CREATING WATER DISTRICT NO. 170)	
<hr/>		
THOMPSON CREEK MINING COMPANY,)	
)	
Petitioner,)	
)	
vs.)	
)	
IDAHO DEPARTMENT WATER RESOURCES,)	
An agency of the State of Idaho,)	
)	
Respondent.)	
<hr/>		

AGENCY'S TRANSCRIPT ON APPEAL

Appealed from the Department of Water Resources, of the State of Idaho
David R. Tuthill, Jr., Interim Director

Scott L. Campbell
Dylan B. Lawrence
Moffatt, Thomas, Barrett, Rock &
Fields, Chartered
101 S. Capitol Blvd. 10th Floor
Post Office Box 829
Boise, Idaho 83701
Attorneys for Petitioner

Phillip J. Rassier
Chris Bromley
Deputy Attorney General
Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098
Attorneys for Respondent

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)
CREATION OF A WATER DISTRICT IN)
THE UPPER SALMON RIVER BASIN AREA)
IN ADMINISTRATIVE BASINS 71 & 72)

TRANSCRIPT OF HEARING

Conducted November 9, 2005, Challis, Idaho
Before Presiding Officer Karl J. Dreher
Director, Idaho Department of Water Resources

Transcribed by Patsy McGourty
Administrative Assistant
Department of water Resources

Proceedings transcribed from electronic sound recording.

1 KARL DREHER: Good evening. I am Karl Dreher, Director of the Idaho Department of
2 Water Resources. I am serving as the presiding officer in this matter which deals with
3 the creation of a water district in the Upper Salmon River Basin. The matter concerns the
4 creation of this proposed district that would include both department administrative
5 basins 71 and 72. The provisions of Idaho Code § 42-604 require that this hearing be
6 held prior to the creation of a water district by the director of the Department of Water
7 Resources. The hearing is being conducted on November 9, 2005. We went on the
8 record at approximately 8:10 p.m. This meeting began shortly after 7:00 p.m. but was
9 preceded by a period of questions and answers on related matters.

10 The purpose of this hearing is to provide affected water right holders or their
11 representatives an opportunity to make an oral statement on the record stating their
12 position, views or concerns regarding the creation of the proposed water district. For the
13 purposes of this hearing persons making statements do not need to be sworn in nor will
14 they be subject to cross-examination. All persons signing up to speak will be heard
15 before others are heard and all persons wishing to speak once will be heard once before
16 anyone speaks a second time. Notice of this hearing was mailed to each affected water
17 right holder in the proposed district as required under the provisions of Idaho Code § 42-
18 604. In addition, notice was published in the *Challis Messenger* and the *Big Wood River*
19 *Journal*, two newspapers of general circulation within the proposed district. This hearing
20 was preceded by a public information meeting that was held on October 24, 2005. That
21 meeting was conducted by Mr. Dave Tuthill and Mr. Tim Luke of the Department of
22 Water Resources and it too was noticed along with this hearing in the individual notices
23 sent to individual right holders as well as the notice that was published in the *Challis*

24 *Messenger* and the *Big Wood River Journal*. The purpose of the public information
25 meeting was to determine the reasons for the creation of the proposed water district and
26 to describe the duties that the watermaster of the district would be expected to carry out
27 under the supervision of myself or the person in my position.

28 Assuming that there are no further questions, we're now at the point to where we
29 need to take formal statements and comments from those persons who wish to be heard at
30 this time. So we'll take these in order of the people that signed up. The first individual is
31 J.R. Challis if you would come forward and state your name and address for the record.
32 Go ahead and have a seat.

33

34 CHALLIS: Director Dreher my name is Jack Challis. I'm a water right owner in Challis
35 Creek Water District 72C. Also currently serve as secretary-treasurer for both water
36 district 72C and 72B and have served in past years as watermaster for both of these
37 districts and currently continue to serve as watermaster for the Warm Spring Canal water
38 users. Though my testimony this evening is my own, I am confident that put to a vote it
39 would represent the opinion of the vast majority of all water right owners in both districts
40 72C, having 86 right owners representing 158 surface water rights, as well as 72B having
41 32 water right owners representing 60 surface water rights.

42 In 1997 our district 72C took the initiative with the help of IDWR personnel to
43 GPS and numerically identify all diversions in our drainage. At the same time while
44 utilizing duly approved district resolutions all diversions were mandated within a
45 reasonable time frame to be brought into compliance with IDWR Water Master
46 Handbook Construction Guidelines, as well as Idaho Code, with regard to lockable head

47 gates and approved measuring devices. This was completed by our water district as well
48 as 72B in 1997. Simultaneously, we began to develop a data base software program
49 subsequently dubbed watermaster whereby we could 1) maintain complete records of
50 individual water right owners, both past and current, as well as designated authorized
51 representatives in cases of out-of-state or off premises water right owners; 2) key to each
52 owner their respective water right, their purchase date, their maximum allowable cfs and
53 the priority date; 3) key water right and source to each diversion or diversions designated
54 by the right to receive such deliveries; 4) allow an ongoing entry of flows throughout the
55 irrigation season as logged and submitted by our watermaster for each water right at their
56 respective point of diversion; and 5) configure data base extraction procedures whereby
57 water deliveries could be detailed and made available in hard copy or electronically in
58 virtually any format for reporting usage by owner, right, diversion, source, irrigation
59 season, and time period within any irrigation season or any combination thereof.

60 Now we are being presented with the creation of what is deemed the Upper
61 Salmon Water District though many in this proposed new district would question any
62 actual needs for such actually exists. Let it suffice to say that the majority realize, like it
63 or not, the now finalized Wild and Scenic Rivers Agreement has made this proposed new
64 district mandatory. That having been said, I like others in the proposed district have been
65 working in a steering committee created by your department to establish a workable
66 format. This effort continues but in light of the hearing tonight preceding any steering
67 committee recommendations or conclusions, I felt it necessary to bring forward facts and
68 a resulting proposal I feel should be considered in your evaluation of this new district.

69 In the presentation by the department's Mr. Dave Tuthill and Mr. Tim Luke in the
70 Upper Salmon Water District public meeting held here October 24, slides were included
71 outlining the necessity for an Upper Salmon Water District watermaster to oversee this
72 new district. Relevant discussion revealed expense to water owners for this man or
73 woman anywhere from \$70,000 to \$100,000 annually. While it was noted the
74 department, you specifically, had generously offered to provide this individual and
75 support requirements free of charge for the first two years, thereafter this expense will
76 undoubtedly have to be borne by Upper Salmon Water District water right owners. This
77 is where my concern arises. The justification for the aforementioned expense depicted by
78 Mr. Tuthill and Mr. Luke's slides outlined the obligations to which IDWR must comply
79 in order to meet conditions of the Wild and Scenic Rivers Agreement and the resulting
80 requirements of the Upper Salmon Water District watermaster and in turn all water right
81 owners. These include lockable controlling works, approved measuring devices,
82 collection and recording diversion data, enforcing water rights in priority, curtailing
83 unauthorized and excessive diversions, include surface water as well as ground water,
84 quarterly reporting of diversions, again surface water and ground water, annual reports
85 and budgets. Director Dreher, other than inclusion of the ground water information
86 easily added to our database and reporting quarterly rather than annually, a simple two-
87 hour matter of programming our current software to create such a report from data
88 already available, we can do everything you require now today. Not only that, we could
89 provide the same data back to 1997. No less important and the obvious learning curve
90 we faced were done at our sole expense. In this light, how is it logical much less fair that

91 water district 72C as well as 72B should be burdened to pay for the other water users in
92 the new Upper Salmon Water District to comply with everything we can already do?

93 One last point. I'm going to take the liberty of anticipating your suggestion that
94 by providing the Upper Salmon Water District watermaster the first two years this will
95 allow sufficient time to even the playing field, as to say, and allow the others to catch up.
96 With all due respect, IDWR has not been able to get anyone in the proposed Upper
97 Salmon Water District other than 72C and 72B to comply for the many, many years
98 Idaho Code has always mandated most of these exact procedures. Frankly, we consider it
99 highly unrealistic that in the next two years the department can possibly get this done.
100 However, if we are proven wrong, and you get it done, we should then unquestionably
101 contribute our proportional share. On the other hand, if you cannot, we do not feel we
102 should be forced to participate in any of the costs until all Upper Salmon Water District
103 water right owners are in compliance with what we have already done and will continue
104 to do in the future. Thank you.

105 DREHER: Thank you. Okay, Jerry Hawkins.

106 HAWKINS: Mr. Director, I'm going to be short. I might even write mine out. I can't
107 remember that much. I'm Jerry Hawkins. Live here in Challis. I'm here for Water
108 District 72F and I don't have a lot to say except on the concerns of putting an upper basin
109 watermaster over that we have to pay for up in here. When Mr. Foster's already over
110 there and we view him as the man to go to in the upper basin and since our watermaster
111 and our secretary-treasurers run the districts that are established and the one that will be
112 required will have to compile and keep documentation and information that the
113 Department of Water Resources need, we feel that there is no need for the upper basin

114 watermaster because if the district needs to answer to the department, that can be done
115 through Mr. Foster at the Salmon office and eliminate the middle man in a role there that
116 we'd have to pay for out of our pocket.

117 Now so many of the people that we've been dealing with here the last few years
118 especially around through the many challenges the state's been up against with the
119 landowners and water users here, we understand about a head gate and a measuring
120 device because we're going to go there through a court. One or the other is where we're
121 going and we have no problem with that and we understand it and as a matter of fact, the
122 people in a lot of areas are supportive of it since they fully understand the position of the
123 state. But we do not support the upper basin watermaster and have to pay for him. We
124 would talk to the department to give us Mr. Foster here, let us work with him. Let him be
125 our watermaster and we've asked to sign on with the recommendation that was made by
126 73, 74 and 75 that put together here awhile back and outlined that a plan of what we
127 would like to go to and we would fully like to support him in this and we hope that you
128 all would support us in it. I do want to thank you for having the town meetings in closing
129 here because it saved us and the people around here a lot of travel time and stuff and put
130 it on yawl's back instead of just having a regional meeting and have us come down to em.
131 We really appreciate that and thank you for listening.

132 DREHER: Thank you. Blair.

133 KAUER: Director Dreher and those concerned, my name is Blair Kauer. I'm a person
134 within the boundaries of water district 74, 74W, 74Q and several other water districts.
135 We have several water districts in Basin 74, more than is on my toes and feet, more than I
136 can count. The creation of water districts is necessary certainly for the administration of

137 water, but particularly in water district 74, all of the appropriated water is being mastered.
138 It just isn't necessary to have another watermaster mastering something that isn't
139 necessary. That's the whole reason for creating a water district is to master appropriated
140 water; therefore, I do not feel that water district 74 needs to be an Upper Salmon Basin
141 water district. Whose senior water rights are not already being protected?

142 Another question that I had is who's going to pay for that Upper Salmon Basin
143 watermaster once it is created and of course, and if it is created under one person, one
144 vote regardless of how much water they own, they would have an equal share of election
145 for that watermaster. In my opinion, also, as we do in water district 74, we pay the
146 assessment on water right held and it works very well for paying that watermaster under
147 the water right held, not the water right used. It's a good system. And those particular
148 statutes I think can be created in this water district and function quite well.

149 My last comment is if we don't need it, we don't want it and I guess we don't
150 want it in water district 74. Thank you.

151 DREHER: Mr. Kauer, you did not state your address for the record.

152 COWER: The address is Box 111, Lemhi, Idaho 83465.

153 DREHER: Thank you. Okay, I believe that's everybody that signed up to testify that
154 didn't subsequently indicate that they had decided not to testify. Is there anybody else
155 here.... oh, wait a minute. I'm sorry, Mr. Whitaker, if you would like to testify, please.

156 WHITAKER: Director Dreher, I'm James Whitaker, Leodore, Idaho, P.O. Box 240. I'm
157 on the advisory board of 74W and 74Z, and I guess the thing I kind of want to
158 reemphasize ... I disagree somewhat with a little that's been said here but I think we're
159 pretty unanimous on this Upper Salmon River Basin head watermaster as far as who's

160 going to pay for him and who's deriving the benefit. And as you've already indicated
161 that the Forest Service and the Idaho Dept. of Water Resources, the main reason we're
162 having the watermaster is to make sure that we're not irrigating any ground that's not
163 supposed to be irrigated or we're not diverting any water that's not supposed to be
164 diverted. Well, in most of these districts, we're pretty good policemen ourselves on our
165 neighbors and I feel like that the concept has been working real good in our area the way
166 we have it in essence...over there we've got the sub districts 74W and 74Z, and if we've
167 had a problem as far as measuring or training or something, we've called in Rick Sager
168 who is on the Lemhi River or Bob (Foster) to come or both of them to come out and
169 straighten that thing out and I feel likeI think it's good to have that the first two years
170 to get this whole organization put together and I agree that the state should pay for that at
171 that point in time, but after we kind of get this thing evolved and I think as you've
172 indicated, it's kind of open to do things, but with the days that we've got computers and
173 we get these people trained ...in essence I can't see why we probably need anybody that
174 we don't presently have in the system already. We might just need to expand Bob's area
175 over the whole area or something like that because I realize that 71 and 72 probably
176 haven't been receiving this same coverage, but I feel like that 73, 74 and 75 apparently
177 have, and we're pretty well already, like I say, policing each other, and if we have a
178 problem, why we've always called in your personnel probably out of the Eastern Idaho
179 office and they've come up and went through with the watermaster and we've had that
180 done on our tributaries...just as in the past when somebody isn't happy, why we've had
181 them come up and go with the watermaster and the advisory board and then we'd go out
182 and go up and check the ditches and if we needed to put in and block somebody's head

183 gate, or if we needed a measuring device fixed, why we got it fixed, but I think we're
184 way over emphasizing the need down the road for this fellow that's going to be requiring
185 a lot of money to police us in essence. And if that's his job, merely police us and train
186 us, I think he can train us in a couple years and I think that we've got the training with
187 Bob and Rick already on the ground. Those guys can come; they're close to us. I don't
188 see a need after a couple of years of possibly having this head watermaster in at least why
189 we can't just go to the water department if we have problem. I think that we ought to give
190 that some real consideration not cut in stone that we're going to have that and assume that
191 responsibility of paying for him down the road, but anyway with that, thank you, Director
192 Dreher, for giving me the opportunity to testify tonight and I think we're heading in the
193 right direction, and I appreciate the effort that you folks have made working with the
194 steering committee, and coming up and giving everybody an opportunity to ask questions
195 and hopefully work this thing out right to begin with. I realize that we've come to a point
196 in time when water is very important and that we need it tied to us and with that, thanks
197 again.

198 DREHER: Thank you. Okay, now is there anybody here who's had a change of heart
199 that didn't sign up to testify that now wants to testify? Okay. Please state your name and
200 address for the record.

201 BRECKINRIDGE: Katie Breckinridge, Box 685, Picabo 83348. After listening to a lot
202 of testimony and understanding very significantly that there are large portions of water
203 that have already been measured and there are already adequate water measurement
204 districts in place, I refer back to my experience in a different water management district
205 where the same scenario took place, but there were still large areas and amounts of water

206 that did not have a current way to be measured and so that became... I question now if the
207 first stage of this district could be looking at a map and including all of the area that does
208 not have a current water measurement district, a current means of measuring their water.
209 And I think a lot of that is going to fall in 71 and my understanding is that 71 and 72 are
210 the first districts that have to come on line. It sounds like 72 is well prepared. I know 71
211 is not. And if there could be a way that 71 could look in a different matter instead of
212 looking at 71 and 72, but look at all of the districts that fall under the proposed water
213 measurement districts, and identify the areas and the water users that are not currently
214 being measured, and identify that water and those water right users become the first ones
215 that have to step forward and come up with a form of measuring our water and would fall
216 under the benefit of the first two years of your offer to pay or hire a watermaster. I think
217 from that point forward we could then look at all the other areas that have the current
218 water measurement district and try to decide how we could all come together and that
219 would alleviate the strong question here tonight of why do we need to have a layered
220 system. There are large quantities of water that are already measured. There are also
221 large quantities of water that are not measured. I think we need to be able to identify
222 both of those as we move forward. Thank you very much.

223 DREHER: Thank you. Okay anybody else that did not sign up to testify that wants to
224 testify now? Is there anybody that has testified that wishes to add something or testify a
225 second time? Okay. Going once, going twice. All right.

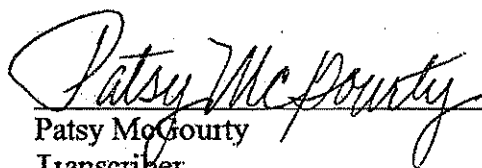
226 Given that it appears that there are no other persons that want to make a
227 statement, that will conclude the record of oral statements in this proceeding. Thank you
228 to all that did come forward to testify. The hearing record for this matter will remain

229 open for a little more than ten days through November 21st to allow time for the submittal
230 of additional written comments as provided for in the notice of this proceeding and as
231 required by Idaho Code § 42-604. After considering the entirety of the record, I will
232 issue a final order following the close of the comment period to dispose of this matter and
233 a copy of that final order will be sent by regular mail to all holders of water rights
234 affected by the order. Any water right holder who disagrees with the final order may file
235 a petition for reconsideration with me within 14 days of the service date of the order.
236 Any party feeling aggrieved by the final order may seek judicial review before the district
237 court within 28 days of the issuance of the final order or within 28 days of the action
238 taken on any petition for reconsideration. Thank you for attending. The record is now
239 closed except for the taking of additional written comments.

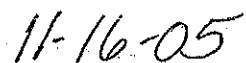
PROCEEDINGS CONCLUDED

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



Patsy McGourty
Transcriber



Date

Filed at 11:54 AM
April 18 2007

Clerk of the District Court

By Ruth Brunken

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN RE: IDAHO DEPARTMENT OF WATER
RESOURCES AMENDED FINAL ORDER
CREATING WATER DISTRICT NO. 170

Case No. CV 2006-66

THOMPSON CREEK MINING COMPANY,

Petitioner,

vs.

IDAHO DEPARTMENT WATER RESOURCES,
An agency of the State of Idaho,

Respondent.

AGENCY'S RECORD ON APPEAL

Appealed from the Department of Water Resources, of the State of Idaho
David R. Tuthill, Jr., Interim Director

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State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 13, 2005

RE: Motion for Order of Interim Administration in Basins 71 and 72

Dear Water User:

The enclosed documents relate to the State of Idaho's Motion for Order of Interim Administration, which seeks District Court authorization for administration of water rights in Administrative Basins 71 and 72.

The purposes for the request are to obtain authority for the Director of the Idaho Department of Water Resources ("IDWR") to create or revise water districts, and to provide for long-term administration of surface and ground water rights from hydraulically connected sources. One step in this process is the notification of potentially affected water right holders. Therefore, this mailing is being sent to all water right holders of record (except those whose use is solely for de minimis domestic and/or stockwater purposes) in Basins 71 and 72. IDWR intends to proceed with creation of a water district in Basins 71 and 72 later this year pending the District Court's approval of this request. IDWR will send additional notice to right holders regarding the Court's decision and water district creation.

Enclosed with this mailing are the following documents: (1) Motion for Order of Interim Administration and Notice of Hearing; (2) Brief in Support of Motion for Order of Interim Administration; and (3) Affidavit of Tim Luke, Section Manager for the IDWR Water Distribution Section.

If you have any questions, please call the IDWR hot line at 1-800-451-4129. You may also contact the Department's Salmon Field Office at 208-756-6644, or the office referenced in the above letterhead.

Sincerely,

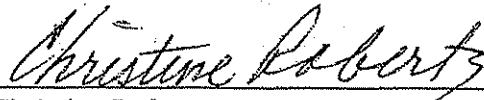
Karl J. Dreher
Director

Enclosures
Letters to Water Users re: Motion for Order
Of Interim Administration in Basins 71 and 72 May 13, 2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of October, 2005, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Notice of Public Information Meeting and Hearing in the Upper Salmon River Area In Administrative Basin 71 & 72.

A handwritten signature in cursive script, reading "Christine Roberts", is written over a horizontal line.

Christine Roberts
Technical Records Specialist

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
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ISB #2207

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. 92-00021
)	
	)	MOTION FOR ORDER OF
Case No. 39576	)	INTERIM ADMINISTRATION OF WATER RIGHTS
	)	IN BASINS 71 and 72 AND NOTICE OF HEARING
)	
)	

The State of Idaho moves this Court for an order of interim administration of water rights¹ in Snake River Basin Adjudication for Basins 71 and 72, pursuant to Idaho Code § 42-1417, in accordance with the Director's Reports for Snake River Basin Adjudication Basins 71 and 72 filed with the Court and partial decrees that have superseded the Director's Reports. The grounds for this motion are as follows:

1. Idaho Code § 42-1417 provides that the district court may, by order, permit the distribution of water pursuant to chapter 6, title 42, Idaho Code, through water districts in

¹ This motion does not seek authorization for interim administration of domestic and stock water rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

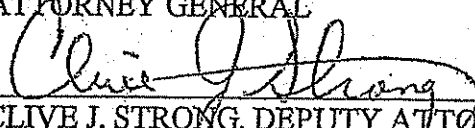
accordance with the Director's Report and the partial decrees for water rights acquired under state law or established under federal law. Idaho Code § 42-1417 provides that the district court may enter the order after notice and hearing, if the district court determines that interim administration of water rights is reasonably necessary to protect senior water rights.

2. Interim administration of water rights in Basins 71 and 72 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of a water district for these basins will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.
3. In accordance with Idaho Code § 42-1417(2)(b), notice of this motion is being provided to all affected claimants in Basins 71 and 72 by mailed notice.

THEREFORE, the State respectfully moves this Court for an order authorizing interim administration of water rights in Basins 71 and 72 in accordance with the Director's Reports for these Basins and the partial decrees that have superseded the Director's Reports. The *Affidavit Of Timothy J. Luke In Support Of Motion For Order Of Interim Administration* and a brief in support of this motion are submitted herewith. Oral argument on this motion is requested.

DATED this 13th day of May 2005.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

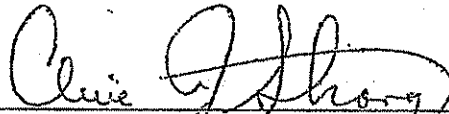

CLIVE J. STRONG, DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION

NOTICE OF HEARING

Notice is hereby given that the motion for interim administration for Basins 71 and 72 will be heard on September 20th at 1:30pm at the Blaine County Courthouse, First Street and Croy Street, Hailey, Idaho 83333.

DATED this 13th day of May 2005.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Clive J. Strong", is written over a horizontal line.

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION

LAWRENCE G. WASI
Attorney General

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ISB # 2207

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. 92-00021
	)	BRIEF IN SUPPORT OF MOTION FOR
Case No. 39576	)	ORDER OF INTERIM ADMINISTRATION
	)	FOR WATER RIGHTS IN BASINS 71 AND 72
_____)	

DESCRIPTIVE SUMMARY

This document is the State of Idaho's brief in support of its Motion for Order of Interim Administration, which seeks authorization for administration of water rights pursuant to chapter 6, title 42, Idaho Code, in Basins 71 and 72 in accordance with the most current Director's Report,¹ or in accordance with partial decrees that have superseded the Director's Reports.

¹ The Director's Report for Basin 71 was filed with the SRBA district court on November 10, 1998. The Director's Report for Basin 72 was filed on January 29, 1999.

BRIEF

I. INTERIM ADMINISTRATION OF WATER RIGHTS IS REASONABLY NECESSARY TO PROTECT SENIOR WATER RIGHTS.

A. Introduction

Administration of water rights is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. The primary statutory mechanism for distribution of water in accordance with the prior appropriation doctrine in Idaho is through creation of a water district and the office of watermaster within that district under the supervision of the Director (hereinafter "Director") of the Idaho Department of Water Resources (hereinafter "IDWR"). Idaho Code § 42-602. *et seq.*

The Director has the authority to create a water district upon entry of a court decree that determines the water rights within the geographic boundaries of the proposed water district, Idaho Code § 42-604, or upon entry of an order from the district court that authorizes the use of a Director's Report for purposes of interim administration. Idaho Code § 42-1417. Under Idaho Code § 42-1417, the SRBA district court may order interim administration in accordance with the Director's Report upon a determination that administration is reasonably necessary to protect senior water rights. As demonstrated below, the purpose for seeking interim administration is to provide a legal mechanism for the Director to administer both surface and ground water rights pursuant to chapter 6, title 42, Idaho Code.

B. Interim Administration is reasonably necessary for efficient administration of water rights.

Interim administration of water rights in Basins 71 and 72 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of water districts for

these basins will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law. In order to fully and adequately deliver water rights, the Director needs to have ground water rights and surface water rights organized into water districts pursuant to chapter 6 of title 42, Idaho Code. The purpose of this motion is to combine ground water rights and surface water rights in Basins 71 and 72 into a water district or districts so that they may be administered conjunctively.²

C. Facilitating the implementation of conjunctive administration is a major purpose of the SRBA.

Resolving the legal relationship between ground and surface waters was one of the main reasons for commencement of the SRBA. In the 1994 Interim Legislative Committee Report on the Snake River Basin Adjudication the Committee stated the following goals for the SRBA:

All water rights within the Snake River Basin should be defined in accordance with Chapter 14, Title 42 so that all users can predict the risks of curtailment in times of shortage. It is vital to all water users that they have as high a degree of certainty as possible with respect to their water rights. Uncertainty discourages development, undermines the ability of agencies to protect stream systems and fosters further litigation.

1994 *Interim Legislative Committee on the Snake River Basin Adjudication* at 32. The Committee went on to state, "In fact, the Snake River Basin Adjudication was filed in 1987 pursuant to I.C. § 42-1406A, in large part to resolve the legal relationship between the rights of ground water pumpers on the Snake River Plain and the rights of Idaho Power at its Swan Falls Dam." 1994 *Interim Legislative Committee* at 36.

It was initially expected that upon completion of the SRBA, water districts would be created pursuant to chapter 6, title 42, Idaho Code, to, among other functions, protect senior water rights from injury caused by junior water rights diverting from hydraulically connected

² The State of Idaho's motion for interim administration does not seek administration of domestic

sources within the Snake River Basin in Idaho. The legislature recognized that there might be a need for earlier interim administration of water rights during the pendency of the general adjudication and, therefore, authorized the SRBA district court to "permit" the Director to distribute "water pursuant to chapter 6, title 42, Idaho Code" in accordance with applicable partial decree(s) and/or with Director's Report(s) upon a finding that such administration is reasonably necessary to protect senior water rights. Idaho Code § 42-1417.

D. Creation Of Water Districts Is Reasonably Necessary to Protect Senior Water Rights.

As Tim Luke, Section Manager for the Water Distribution Section for IDWR, states in his affidavit, the existing water districts in Basins 71 and 72 include only part of the rights from surface sources and few or none of the rights from ground water sources. *Affidavit of Timothy J. Luke*, at 3. While IDWR has created water measurement districts in these areas, the measurement districts' authority is limited to measurement and reporting of diversions and does not include authority for the administration of water rights, or the enforcement of water right conditions. *Id.* at 3. The formation of water districts will allow water to be distributed in accordance with the prior appropriation doctrine as established by Idaho law.

The creation of water districts is an important step in the administration of water rights. Water districts provide mechanisms for administration, regulation, and enforcement of water rights. *Id.* They also provide a means for incorporating regular measurement and reporting of diversions, including ground water diversions. *Id.* In addition, water districts provide for timely response to general calls for water distribution and provide a system whereby a watermaster can provide timely assistance and expertise to water users and respond to their complaints. *Id.* Furthermore, water districts provide for improved management of water rights records, and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11).

specifically maintaining current ownership information. *Id.* Creation of water districts provides an equitable funding mechanism for these services. *Id.* The water users will fund the costs of the watermasters as provided for by Idaho Code §§ 42-605A and 42-612.

Because all of the water rights in these basins are partially decreed in the SRBA or recommended in Director's Reports, it is appropriate that water districts be established to administer the water rights within Basins 71 and 72. Establishment of water districts also will enable the Director and participating water right holders to take further steps toward long-term administration of the resource.

The watermaster duties in the new water districts will be to (1) curtail illegal diversions (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); (2) measure and report the diversions under water rights; and (3) curtail out-of-priority diversions determined by the Director to be causing injury to senior water.

II. THE DIRECTOR'S REPORTS AND PARTIAL DECREES PROVIDE AN ADEQUATE LIST OF WATER RIGHTS FOR PURPOSES OF INTERIM ADMINISTRATION.

Chapter 6 recognizes that distribution of water requires an accurate listing of water rights. Idaho Code § 42-604, providing for the creation of water districts, applies only to "streams or water supplies" whose priorities of appropriation have been adjudicated by courts having jurisdiction thereof. The Idaho Supreme Court has recognized the importance of an accurate list containing the description of the water rights to be administered. In *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977), the Idaho Supreme Court stated: "Only by having a specific list reciting the names of water users, with their dates of priority, amounts, and points of diversion can a system be administered." *Id.* at 91, 558 P.2d at 1052, quoting *DeRousse v. Higginson*, 95 Idaho 173, 505 P.2d 321 (1973).

Before the court can issue the order of interim administration, it must find that the individual partial decrees that supersede the Director's Report for individual recommendations and the latest filing of Director's Reports where partial decrees have not been issued are an adequate listing of the owners of and the elements of the water rights for the purposes of interim administration of a water source. Idaho Code § 42-1417 contemplates that the Director's Reports constitute an adequate listing, since all the claims have been investigated by state officials and reported to the court. The statute assures procedural due process by requiring notice to the claimants and by allowing the court to modify the Director's Report for purposes of interim administration. The statute also contemplates that the partial decrees provide an adequate listing of water rights for purposes of interim administration because these rights have not only been investigated by state officials, but have also withstood the scrutiny of court review. Thus, the Director's Reports and the partial decrees meet the need for administration pending the completion of the adjudication. Upon entry of an order for interim administration, the creation of water districts and the distribution of water thereunder will occur in accordance with the normal administrative mechanism created by chapter 6, title 42, Idaho Code.

III. NOTICE IS BEING PROVIDED TO EACH CLAIMANT THAT WILL BE SUBJECT TO THE INTERIM ADMINISTRATION ORDER.

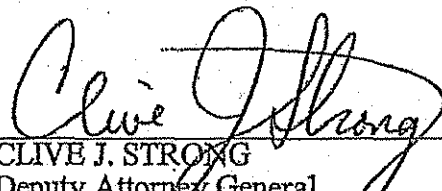
Idaho Code § 42-1417 requires that notice be given to "each claimant of water from the water system or portion thereof that could reasonably be determined to be adversely affected by entry of the order" The State of Idaho is mailing notice of this motion to all claimants who may be subject to interim administration if this motion is granted. Therefore, the notice provisions of Idaho Code § 42-1417 are satisfied.

CONCLUSION

Interim administration, as requested in the State's motion, is reasonably necessary to prevent injury to senior water rights in Basins 71 and 72 as required by Idaho Code § 42-1417. The Director's Reports for these Basins and the partial decrees that supersede the Director's recommendations are based on examination of the claims and the water system as required by Idaho Code § 42-1411. As such, the Director's Reports and the partial decrees constitute an adequate listing of water rights for purposes of administration of water rights pending entry of a final decree of the water rights. Therefore, the State requests that the Court enter an order permitting the administration of water rights pursuant to chapter 6, title 42, Idaho Code, in Basins 71 and 72 in accordance with the definition of water rights listed in the Director's Reports and, where superseded, in accordance with the partial decrees.

DATED this 13th day of May 2005.

LAWRENCE WASDEN
Attorney General


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ISB # 2207

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Subcase No. 92-00021

Case No. 39576)

AFFIDAVIT OF TIMOTHY J. LUKE
IN SUPPORT OF MOTION FOR ORDER
OF INTERIM ADMINISTRATION

STATE OF IDAHO)

) ss.

County of Ada)

Timothy J. Luke, being first duly sworn upon oath deposes and states as follows:

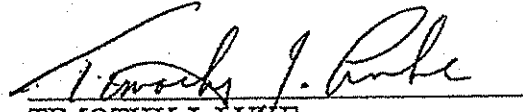
1. My name is Timothy J. Luke. I am the Section Manager for the Water Distribution Section for the Idaho Department of Water Resources (IDWR). My work address is Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho 83720-0098. I reside in Boise, Idaho.
2. My education background includes a Bachelor of Arts degree in Geography from West Virginia University in 1982 and a Master of Science degree in Geography and Natural Resource Management from the University of Idaho in 1992. My education/training

since college has included, but is not limited to, participation in seminars and courses related to water management such as Ground Water and Surface Water Relationships, Hydraulics, Water Management Workshop, Field Hydrogeology, Irrigation System Design and several water law workshops.

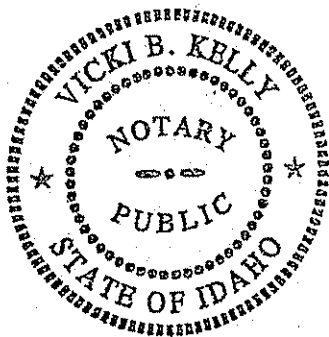
3. I worked from September 1988 to August 1991 for IDWR as a Senior Water Rights Agent. My duties included, but were not limited to the review, analysis, recommendation and processing of water right transfers, and the review and processing of applications to reallocate water held in trust under the Swan Falls agreement.
4. From September 1991 to February 1992, I worked for IDWR as a Hydrologist-in-Training, in the Water Permits Section. My duties included, but were not limited to water district assistance, field inventory and measurement of diversions, and water right analysis.
5. I worked from March 1992 to February 1997 for IDWR as a Hydrologist in the Water Permits and Water Distribution Sections. My duties included, but were not limited to, assisting in the implementation of the water measurement program, field inventory and measurement of diversions, water district assistance, water right analysis, reduction and analysis of hydrologic data and preparation of reports, and investigation of water distribution complaints and water right disputes.
6. From March 1997 to the present, I have served as the Section Manager for the Water Distribution Section. My primary responsibilities are the implementation and management of the water measurement program, provide assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.


7. I have personal knowledge of the water supply conditions and water rights in Basins 71 and 72 through my work with IDWR's Water Distribution Section.
8. The general reasons for the creation or enlargement of a water district are:
- Provide a mechanism for administration, regulation and enforcement of water rights;
 - Provide a means for regular measurement and reporting of diversions, including ground water diversions.
 - Provide a more local and immediate response to general calls for water delivery;
 - Provide for improved management of water rights and keeping water rights current with respect to ownership and water use;
 - Provide a system whereby local watermasters or deputy watermasters can provide for local and timely response to general calls for water distribution; and
 - Water district administration and regulation can be accomplished by assessing water users directly through the districts.
9. The specific reasons for creation or enlargement of water districts in Basins 71 and 72 are:
- Existing water districts in these basins are limited to surface water sources and do not include ground water sources. Additionally, some surface water sources in these basins may not be included in any water district.
 - All of the water rights claimed in Basins 71 and 72 have been reported or partially decreed in the SRBA as required under I.C. § 42-1417.
 - Some areas of the basins are in either water measurement districts or existing water districts, or no district at all. Certain rights and sources (primarily ground water) within water districts have not been subject to administration or regulation by the water district, and measurement districts are limited to measurement and reporting only, not regulation or enforcement of rights.
 - The establishment of water districts will provide watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.
 - The establishment of water districts will provide watermasters the means to protect senior water rights.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


TIMOTHY J. LUKE

SUBSCRIBED AND SWORN to before me this 13 day of MAY, 2005.




Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: 12/10/10

LAWRENCE G. WASDEN
Attorney General

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase 92-00021
	)	(Interim Administration)
)	
Case No. 39576	)	CERTIFICATE OF SERVICE
)	
)	
)	

I hereby certify that on the 13th day of May 2005, I caused to be served true and correct copies of the **MOTION FOR ORDER OF INTERIM ADMINISTRATION OF WATER RIGHTS IN BASINS 71 and 72 And NOTICE OF HEARING; BRIEF IN SUPPORT OF MOTION FOR ORDER OF INTERIM ADMINISTRATION; and the AFFIDAVIT OF TIMOTHY J. LUKE DATED May 13th, 2005**, on the following persons by mailing in the U.S. Mail with the correct postage affixed thereto:

1. One copy to each claimant in Administrative Basins 71 and 72 that could reasonably be determined to be adversely affected by entry of the requested order.

The list of claimants served is attached as Exhibit 1.

2. Copies to:

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IDWR Document Depository
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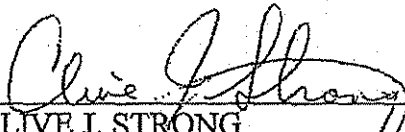
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Rigby Thatcher Andrus
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Ringert Clark Chtd.
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James C. Tucker
Idaho Power Co.
P.O. Box 70
Boise, ID 83707

DATED this 13th day of May 2005.


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Office of the Attorney General

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HECLA MINING COMPANY
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CHAIRMAN
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EDDIE BAKER JR
HC 68 BOX 375
CLAYTON ID 83227

WILLIAM P BARNES
RT 1 BOX 919
MOORE ID 83255

LENORE H BARRETT
PO BOX 347
CHALLIS ID 83226

MICHAEL H BARRETT
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MICHAEL HARDY BARRETT
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R M BARRETT
PO BOX 347
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LYNDELLA A BAUCHMAN
4075 W DESERT INN RD STE B
LAS VEGAS NV 89102

LYNDELLA A BAUCHMAN
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3730 PAMA LN
LAS VEGAS NV 89120

STEPHEN G BAUCHMAN
4075 W DESERT INN RD STE B
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647 W 24TH
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JO ANN BENNETTS
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CHALLIS ID 83226

MIMI MARY BLACK
HC 63 BOX 1605
CHALLIS ID 83226

RONALD W BLOXHAM
PO BOX 359
CHALLIS ID 83226

SHELLEY E BLOXHAM
PO BOX 359
CHALLIS ID 83226

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1002 E BANNOCK
BOISE ID 83702

ROBERT R BOREN
1002 E BANNOCK
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ALICE R BOYLE
10510 WILDROSE CT
BOISE ID 83704

W DEAN BOYLE
10510 WILDROSE CT
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CHALLIS ID 83226

ROBERT D BRADLEY
PO BOX 241
CHALLIS ID 83226

SHARON SKROH BRADLEY
PO BOX 241
CHALLIS ID 83226

JAY L BRADSHAW
PO BOX 155
CHALLIS ID 83226

KENNETH BRADSHAW
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CLAYTON ID 83226

LETA F BRADSHAW
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CLAYTON ID 83226

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FRED HAROLD BRUBAKER
PO BOX 97
STANLEY ID 83278

ALY M BRUNER
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CHALLIS ID 83226

BRENT J BRUNKER
HC 68 BOX 303
CLAYTON ID 83227

RUTH BRUNKER
HC 68 BOX 303
CLAYTON ID 83227

RUTH E ROUNDS BRUNKER
HC 68 BOX 303
CLAYTON ID 83227

NANCY D BUEHLER
HC 63 BOX 1535
CHALLIS ID 83226

WERNER G BUEHLER
HC 63 BOX 1535
CHALLIS ID 83226

R RICHARD BURCHILL
HC 63 BOX 1575-3
CHALLIS ID 83226-9301

RUTH E BURCHILL
HC 63 BOX 1575-3
CHALLIS ID 83226-9301

JENNESS R BUTTERFIELD
PO BOX 87
CHALLIS ID 83226

DONNA L BUTTS
PO BOX 6
CHALLIS ID 83226

THOMAS A BUTTS
PO BOX 6
CHALLIS ID 83226

WAYNE F BUTTS
DBA GATEWAY AUTO PARTS
PO BOX 624
CHALLIS ID 83226

JONI D CAIN
PO BOX 1132
CHALLIS ID 83226

PIERRE C CAIN
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WHITNEY COLLINS
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GEORGE E COOK
PO BOX 400
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TWIN FALLS ID 83301

R C COOPER
588 BUCKINGHAM
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CHALLIS ID 83226

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HC 63 BOX 1583
CHALLIS ID 83226

MARY E COX
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CHALLIS ID 83226

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KAY CRESTO
PO BOX 1028
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STANLEY ID 83278

HELEN A CUTLER
PO BOX 209
CHALLIS ID 83226

HOWARD R CUTLER
HC 67 BOX 2066
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CHALLIS ID 83226

RODNEY E EVANS
HC 63 BOX 1855
CHALLIS ID 83226

ANN FINLAYSON
374 FAIRWAY DR
POCATELLO ID 83201

DIANE W FISHER
HC 67 BOX 619
CLAYTON ID 83227

LEONARD L FISHER
HC 67 BOX 619
CLAYTON ID 83227

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PO BOX 924
CHALLIS ID 83226

PAMELLA L FORESTIER
6548 RED ROCK RD
MARSING ID 83639

BEN ROY FORSGREN
HC 67 BOX 300
STANLEY ID 83278

JANET T FORSGREN
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CHALLIS ID 83226

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CHALLIS ID 83226

ANTHONY D GAMMACHE
PO BOX 146
CHALLIS ID 83226

THOMAS GAMMACHE
PO BOX 146
CHALLIS ID 83226

WILLIAM T GAMMACHE
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CHALLIS ID 83226

BONNIE LYNN GARMAN
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STEVEN P GARMAN
PO BOX 4029
KETCHUM ID 83340

ANITA L GETTY
H/C 68 BOX 355
CLAYTON ID 83227

BRET A GETTY
H/C 68 BOX 355
CLAYTON ID 83227

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ROBERTA H GREEN
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MAUDE LOU GREENWELL
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NADINE GRIFFITH
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CHALLIS ID 83226-0248

JEAN GUFFY
HC 68 BOX 365
CLAYTON ID 83227

L JEAN GUFFY
HC 68 BOX 365
CLAYTON ID 83227

LYLE GUFFY
HC 68 BOX 365
CLAYTON ID 83227